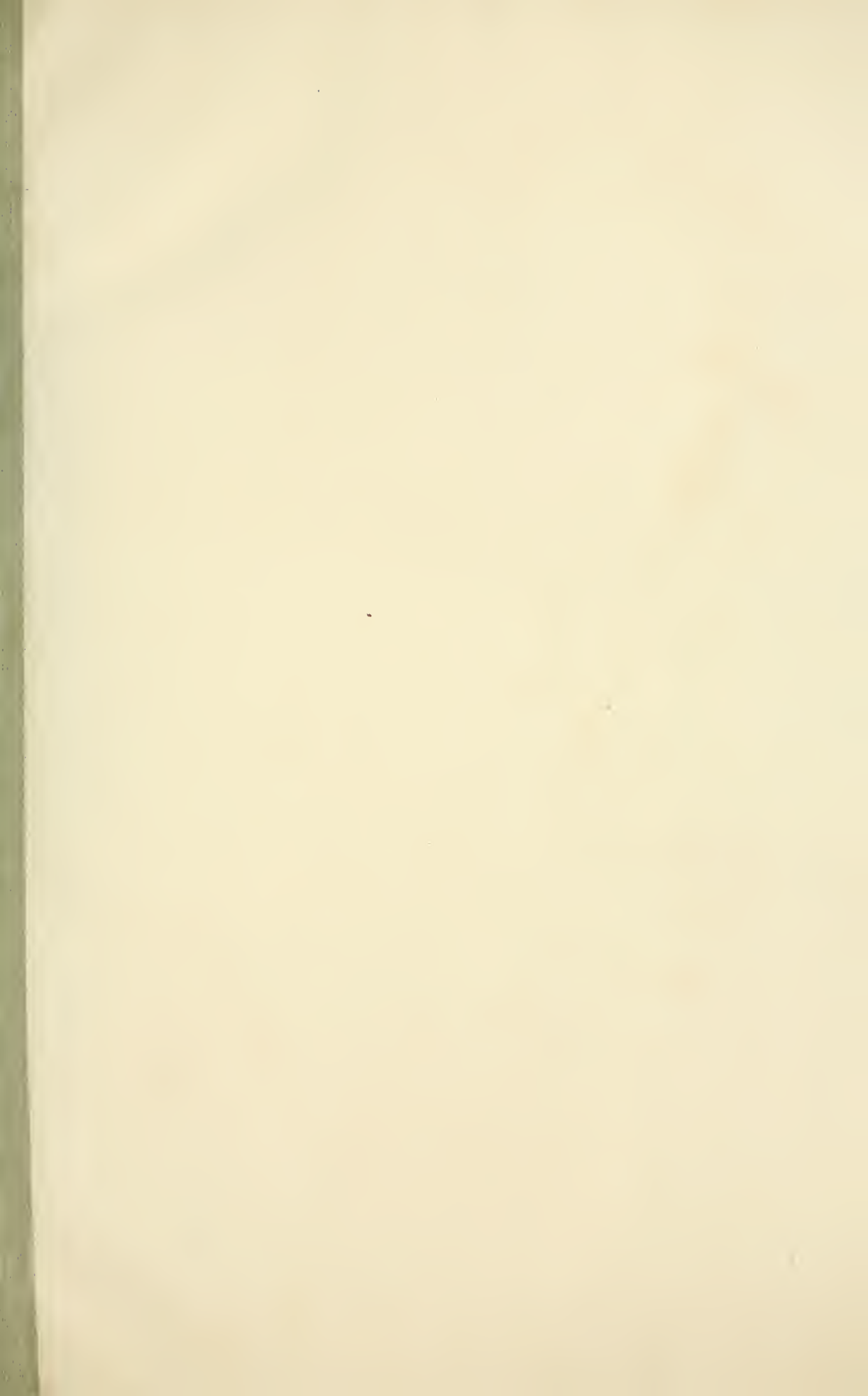


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CRIMINAL TRIALS IN SCOTLAND,

FROM A.D. M.CCCC.LXXXVIII TO A.D. M.DC.XXIV,

EMBRACING THE ENTIRE

REIGNS OF JAMES IV. AND V., MARY QUEEN OF SCOTS,
AND JAMES VI.

COMPILED FROM THE ORIGINAL RECORDS AND MSS.

WITH

HISTORICAL NOTES AND ILLUSTRATIONS,

BY

ROBERT PITCAIRN, ESQ.

WRITER TO HIS MAJESTY'S SIGNET, F.S.A. SCOT. AND HON. F.S.A. PERTH, &c.

VOLUME THIRD.

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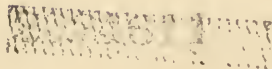
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TO
THE HON. DAVID HUME,
ONE OF THE BARONS OF THE COURT OF EXCHEQUER, IN SCOTLAND.
LATE
PROFESSOR OF SCOTS LAW,
IN THE UNIVERSITY OF EDINBURGH,
AND
AUTHOR OF COMMENTARIES ON THE CRIMINAL LAW, &c. &c.
THIS THIRD VOLUME
OF A COLLECTION OF THE MOST ANCIENT TRIALS, NOW ON RECORD,
BEFORE THE
HIGH COURT OF JUSTICIARY,
IS, WITH EVERY SENTIMENT OF ESTEEM AND RESPECT,
DEDICATED
BY
THE EDITOR.



CRIMINAL TRIALS

AND OTHER PROCEEDINGS BEFORE THE

HIGH COURT OF JUSTICIARY.

[*Sir Williame Heart, Justice-Depute.*]

Treasonable Fire-raising — Cruel Oppression — Treason — Breaking Ward out of the Castles of Blackness and Edinburgh.

[THE almost incredible wickedness and atrocious cruelty of SIR JAMES MAKONEILL (MACDONALD), the individual whose Trial follows, and the horrible facts which the reader will find therein disclosed, afford a lamentable picture of the barbarous state of manners prevalent in the Western Islands of Scotland, even at so comparatively recent a period as the reign of King James VI. Did we not know that such outrageous proceedings were but too common in Scotland at this melancholy period, and especially in the Highlands and Islands, which were then far removed from the feeble arm of the Law, *Sir James's* misdeeds would hold a most conspicuous place in the dark catalogue of crimes. Without entering into any narrative of similar acts of violence and bloodshed, but merely to shew that *Makoneill* was not a solitary instance of the perpetration of such execrable deeds, and that he was by no means unworthy of his descent and kindred, the reader need only refer to a previous portion of this Collection,¹ where a few of the acts of *Angus Makoneill of Dinnievaig*, his father, and of *Macclane of Dowart*, his maternal uncle, are rehearsed.

It would be rather out of place to enter here into a detail of the frightful and bloody feuds and conflicts between the contending tribes of CLANDONALD and CLANLAIN; which are fully recorded by Sir Robert Gordon of Gordonstoun, in his valuable Genealogical History of the Family of Sutherland, who informs us, that these inveterate hostilities were long and fiercely 'prosecuted, to the destruction almost of both their families!'²

Of the personal history of SIR JAMES MAKONEILL little can now be collected, saving from the Books of Adjournal and of the Privy Council, and from the public transactions in the Isles, after he had effected his second escape from 'ward.' It is certain, that he could boast of a very honourable descent, being sprung from the ancient Norwegian family of the Lords of the Isles, who long maintained their independence of the Scottish Crown, and used and received the title of **KINGS OF THE**

¹ Vol. I. p. 224, Jan. 19, 1590-1.

² This is now rendered the more unnecessary, as the Editor has (since this Notice was in types) been informed by his friend, DONALD GREGORY, Esquire, one of the Secretaries to the Society of Antiquaries of Scotland, that he is now engaged in preparing, for publication, a HISTORY OF THE ISLES and adjacent HIGHLANDS, embracing a minute account of the various rebellions, feuds, and conflicts of the various families, who, after the fall of the Lords of the Isles, rendered this part of Scotland a scene of almost uninterrupted warfare and bloodshed: which MR GREGORY purposes to compile from Original Documents, the result of a laborious investigation into the Public Records, and other genuine and authentic sources of information. The publication of MR GREGORY's History of the Isles, &c. will save the Editor the necessity of giving many of the Documents which he had prepared for publication, in illustration of various Trials; for they ought rather to form a part of such an historical work, which is a great *desideratum*, and cannot fail to be favourably received by every lover of Scottish History.

ISLES. JOHN OF YLE, or *de Insulis*, eldest son of *John Lord of the Isles*, was unquestionably the common ancestor of the *Macdonalds of Dunniveg and Glynnnes*, the *Marquis of Antrim*, in Ireland, &c., and predeceased his father; who, Nov. 15, 1369, gave his grandson *Angus* as a hostage to *King David II*, for his obedience, &c. Some of the descendants of this *John*, having settled in the North of Ireland, acquired by force, and afterwards maintained by violence, the *Route* and the *Seven Glynnnes*,¹ and soon distinguished themselves by their services against the Scots. *Alexander Mac-Donell* was, in 1557, for his valuable assistance, presented by the *Earl of Sussex*, Lord Lieutenant of Ireland, with a gold sword and silver-gilt spurs; and others of the family were equally active against their ancient mother country. A brother of this *Alexander*, named *Sorley-buy*,² having seated himself elsewhere, built and fortified the strong Castle of Dunluce, in the county of Antrim: and, as being of the Scottish-Irish race, was by patent, dated at Westminster, Apr. 14, 1573, created a free denizen of Ireland. Having rebelled, *Sir John Perrot*, Deputy of Ireland, took the Castle of Dunluce, with all his islands and loughs; and, next year, having sued for the protection and favour of *Queen Elizabeth*, he entered into indentures for preservation of the peace, Jun. 28, 1586. *Sorley-buy* married Mary, daughter to Con O'Neill, afterwards created Earl of Tyrone. Their eldest son, *Randal*, was created *Earl of Antrim*.

The purpose of stating this connexion is to prevent *Sir James Macconeill* of Kintyre and Knockrynsay, the Chief or eldest son of the Chief of the powerful *Clandonald* or *Clan Ian More* of Kintyre and Ilay, from being mistaken for another *Sir James Macconeill*, one of his Irish relatives (the second son of this *Sorley-buy*), who, at this period, visited Scotland, and was honourably received by the King, when he had the honour of knighthood conferred upon him. He was afterwards created a Baronet, by Privy Seal, dated Southwicke, 20 June, and by Patent, at Dublin, Nov. 30, 1627, 'as well for his service done unto him, as for his other virtues';³ and was known, in Ireland, by the title of *Sir James Mac-Sorlye-Boye*. The first notice of the latter *Sir James*, which the Editor has met with, is in an Anonymous MS. History of Scotland, in the Advocates' Library, where mention is thus quaintly made of him. 'The 20 day of Aprylle, (1597,) JAMES M^cONEILL, *alias Soirlbowy*,⁴ cam to Edr, quha wes maid kny^t be his Ma^{ty}, the 24. This Schir James wes ane Scottis manne, of bluid, albeit his landis lyis in Yrland. He was ane braw manne of perfoun and behaviour, bot had nocht the Scottis tounge, nor na langage bot Eirfe.' *Birrel*, in his gossiping Diary, contents himself with remarking, that 'Serlie Bui cam to the toune, ane Hyland man.' And (May 4) 'JAMES M^cONEILL, *alias Serle Bui*. The 7 day of Maii he went homeward; and, for honour of his *bonyalla*, the canons sbott out of the Castell of Edinburgh.'⁵

With regard to *Sir James Macconeill* of Knockrynsay and Kintyre, as he lived in a district so remote from the seat of Government, and seems to have had his hands full at home, the first known mention made of him is—(Aug. 5, 1598,) 'M^cLEANE was slayne be M^cONEILL,⁶ in Ylla, he being moder-brother to the faid *Schir James M^cconeill*, and ane of the braw man that wes in this cuntrey, in his tyme. Thair wes slayne that day betuix thame, on bayth fydis, to the number off 150 menne.'

These few imperfect sketches prove that *Macconeill* was reckoned a personage of considerable note, even at Court, and in the Capital, previous to the King's accession to the English throne.

The next prominent circumstance in the life of *Macconeill* which can now be collected, after the

¹ It is worthy of remark, that, from the age of *Donall de Insulis*, who flourished in 1449, to *Angus*, the father of *Sir James* of Knockrynsay, the lineal descendants of *John de Insulis* above noticed, resident in the Isles, are uniformly styled 'Lords of Dunnoway and Glynnis.' Whether they merely assumed the title as feudal superiors of the Irish branch, or whether they were actually the proprietors of the soil, of whom the Irish Macdonalds held, Mr Gregory will probably be enabled to explain.

² The yellow-haired Somerled. B. Lat. *Sorletus*, or *Sorlie*, and in Irish and Gaelic, *Samhairle*, long a prevalent name in the family of the Isles. ³ *Lodge's Irish Peerage*, 1. 106.

⁴ 'Surlé-Bouie' is interlined. ⁵ Anon. Hist. of Scotland, MS. Adv. Library. ⁶ 'NEIL (HECTOR) M^cLANE slayne, and twentie of his narrest freindis, and his awen sone, be M^cConnell; thair being at ane tryst, under trust.'—*Birrel*.

period of his apprehension and imprisonment, is the extraordinary attempt to escape out of Ward, from the Castle of Edinburgh,¹ which was so boldly planned, and so successfully accomplished by *John Lord Maxwell*. The event is thus briefly described in the above mentioned Chronicle, where the cause of Sir James Makcaneill's failure is rightly attributed to the circumstance of his having been unable to extricate himself from his heavy irons, whereby he dislocated or broke his limb, in leaping over the wall. This breaking of ward forms one of the leading Articles of Dittay against Makcaneill. (1607, Dec.) 'In the beginning of December, THE LORD MAXWELL, being wairded in the Castle of Edinburgh, devifeth a play² for the keepers, whereby it behoved them to runne out of the houle where he lay. They lay afide their fwords; Maxwell and another gentleman who came purpottie to assist him, with the advice of *Mackoneill*, take their fwords, cloffe them in a house, come to the Castle gate, hurt the porters, lappe the Castle-wall at the utter-gate. *Maxwell* and his friend departed. *Mackoneill*, because he had the boyes³ on his legges, wrested his kute⁴ in leaping; yett he creeped to a dunghill. The crye⁵ rising, he was diligentlie sought, found casting the muck upon himself, and was brought to the Castle agane. This fell furth in the gloming.⁶ The rest of the Wairders were kepted the ftraiter. *Clofburne* was intifed be thame, but refused to breake waird.'

The anonymous Chronicler, before quoted, thus narrates the proceedings which followed on the recapture of this refractory prisoner. 'Now as ye have hard befor, *Sir James M'caneill* of Kintyre, being in waird in the Castell of Edinbroghe, was, one the 13 day of Maii (1609), brocht to the tolbnyth of Edinbrughe, and thair, befor the Justice, put to the tryell of ane Affyfe, for findrie poyntis of Treffoun, to witt, for Slachter, wnder trest, of fun Heland-men, in his awin hous of Kintyre; as also, for diuerse flyris that he had raiffit, contrair the Act of Parliament; and, in speciall, for the cryme of Treffoune, in breking of the Kingis waird, and streking of his Maiesteis seruandis: And, being convict, condemnit, as ane Tratour to his Maiesty, to haue hes heid strukin off,—bot nather the day nor please designit. Quhairwpon he was conwoyit bak to the Castell, to remayne during the Kingis will.' This History, unfortunately, terminates before Makcaneill's final escape.

Without rehearsing the substance of the interesting ORIGINAL LETTERS of Sir James Makcaneill and others, after the date of his second escape, (which at length he effected, and made a successful retreat to the Isles, and maintained himself and a considerable force which he had collected,) it is sufficient to mention, generally, that, according to Sir Robert Gordon, '*Sir James Mackonald* was thereafter, by the Earle of Argyll his meanes, warded in the Castell of Edinburgh, and kept prisoner ther a long tyme; from whence he escaped, by the meanes and diligence of his coufen *Mackrenald*, who then fled with him into Spain;⁷ wher they were weil interteyned. And vpon the Earle of Argyll his flight from Scotland to the King of Spain, they were both recalled home from thence by his Majestie, into England, the yeir 1620; and had there ane yeirle pension of ane thousand merks sterling; wher Sir James Mackonald remained vntil his death, which happened the yeir 1626.' The Documents given in the APPENDIX explain fully all that can now be satisfactorily ascertained, so far as is necessary to elucidate the details of this Trial. It is certain that Sir James was pensioned, and was permitted to reside, without molestation, in England; but it is not so easy to account for the extraordinary policy of the King and his advisers, not only in sparing the life of so notorious a criminal and rebel, but in giving him likewise so liberal a pension, for so many years.

The arm of Government must have been weak indeed, when, after the forfeiture of Sir James, his

¹ See also *Lord Maxwell's Trial*, Jun. 24, 1609, and the Appendix of Original Documents, for farther particulars of this remarkable attempt. ² Sport, frolic. ³ A cant phrase for *gyves*, or heavy irons used for desperate offenders.

⁴ Sprained or dislocated his ankle. ⁵ *Spraiche*; hue and cry. ⁶ After sunset; towards nightfall.

⁷ 'During *Sir James Mackonald* his stay in Spain, his brother ANGUS MACKONALD (*Angus Oig*), standing out against the Earle of Argyll, was trained into Edinburgh by the Lord Ochiltree and the Campbells, vpon promise to saill his lyff: And the Castell of Doumnivag wes randered vnto them, vpon the same termes. Nevertheless, the said Angus wes executed, and put to death, at his coming to Edinburgh.'—*Hist. of Earls of Sutherland*, p. 239. See also this Collection, Jnl. 3, 1615.

brother *Angus Oig* should have been able, in defiance of the various Royal Lieutenants sent to reduce him to obedience, to maintain the Castle of Dunniveaig, until 1615! The same barbarous policy which Argyle adopted in reference to the MacGregors, was resorted to with Angus Oig; who, under promise of safety, was trained to Edinburgh,—also by the Campbells, his feudal enemies; who had long been eagerly soliciting, and, by their treacherous conduct, finally obtained, a grant of the ancient inheritance of the Macdonalds,—and executed for Treason!

Sir James Balfour of Kinnaird and Denmylne has fortunately preserved a body of original and authentic information, relative to the state of the Western Islands, in his extensive and truly valuable MS. Collections,¹ which the Editor shall have frequent occasion to refer to, in the course of this Work. A selection from these Original Papers, given from time to time, will better, and much more forcibly, illustrate the causes and effects of those various commotions in 'THE ISLES,' which excited such lively interest during King James VI's reign, than any detailed Narrative, which, owing to the nature of this Collection, must necessarily be brief.

After considerable research, the Editor has the satisfaction of being enabled to append to the ensuing Trial, and to that of *Angus Oig*, a number of valuable Letters and Papers, taken from the Originals still extant amongst the Records of the Privy Council of Scotland, and in the Advocates' Library. These Documents will be found of considerable importance, as not only affording satisfactory elucidation of points connected with Sir James Makcneill's Trial, but as supplying much curious information relative to the state of the Western Islands, during that unhappy period.

The History of Scotland, so far as concerns the various Expeditions against the Islesmen, which were fitted out at the public expense, as well as the numerous feuds and conflicts between contending Chieftains and Clans, is necessarily meagre and unsatisfactory; and, as is well known to those who have attempted such investigations, it is extremely difficult to obtain authentic information on the subject.²

It may, however, be proper to remark here, generally, that, owing to the inaccessible nature of their country, and the facilities which the natives possessed for carrying on a most harassing warfare against any invaders, however well appointed and disciplined these might be, the most vigorous steps taken by the ablest Royal Lieutenants or Commanders ever sent to quell the Islesmen, frequently proved abortive or nugatory. At other times, the natives contrived to protract the warfare, without coming to decided hostilities, in order that the season might elapse without any considerable advantages being gained by their enemies; and then, they had the whole winter and spring to repair their losses, and to arrange for a more vigorous resistance, should a landing be effected, during the next summer. On almost every such occasion, the largest expeditions ever fitted out by the Privy Council of Scotland, even when assisted by English vessels of war, (after King James had succeeded to the throne of England,) were baffled by the ingenuity and military skill of this handful of hardy and active Islesmen. Some of the Royal Lieutenants appear to have been furnished with large complements of troops; but this very circumstance, formidable as it might otherwise appear, frequently tended to their discomfiture. The castles of the Island Chiefs were usually places of great strength; and, on such occasions, were well victualled; and besides, many of them were, by nature, situated where the clumsy battering-trains then in use could not be brought to bear upon them. The setting fire to the wretched huts of the natives, and laying waste the country, was attended with comparatively little loss to them. Indeed, this was a measure often resorted to, on emergencies, by *themselves*; for it deprived the more effeminate Lowland troops of that shelter which was absolutely necessary for their health.

From the hour of their disembarking, the Royal troops knew no repose; and they suffered the most dreadful privations from cold, famine, incessant watching, and fatigue; for the Islanders, besides their

¹ Preserved in the Library of the Faculty of Advocates, Edinburgh.

² MR GREGORY'S Historical enquiries must throw much light on every point connected with the Isles and adjacent Highlands; and the authentic sources from which his materials are derived, must stamp the highest value on the work he has undertaken.

usual annoyances, harassed them chiefly during the night, by making continual attacks and skirmishes, setting fire to their huts, tents, &c. Besides all these hardships, owing to the tempestuous seas and the imperfect state of navigation at the period, the invaders were frequently cut off from their supplies for a long time. On the other hand, the vigilant Islanders, when they happened to be very hard pressed by a determined pursuit and onset, merely flitted from one Island to another, in their *curraghs* or light boats, which they easily carried with them over land; and, almost before their enemies had prepared to rest from their fatigues, they were surprised and attacked during the night.

The chief cause of the numerous successes gained by the Islanders over their invaders seems to have arisen from the minute knowledge which they possessed of the fastnesses of the country, and their determination to avoid a general engagement. A common *ruse de guerre* was, for a party of active men to make a bold attack on the encampment, as if to carry off plunder, &c., at a time when the Royal troops were unprepared; and when pursued, they gradually fell back on the hilly ground, so as to lead their invaders into ambushes, which were frequently formed not far from the tents. In this way great numbers fell ‘*in detail*.’ When the King’s soldiers endeavoured to penetrate into the country, in pursuit of the enemy, they appeared to meet with little actual resistance, but were artfully decoyed farther and farther, by the occasional appearance of numbers of the Islesmen, as if in full retreat. The Royal troops, as soon as they were considered to be fatigued with the day’s march, were, in their turn, severely galled, and the stragglers systematically picked off. Vigorous attacks were also occasionally made on the main body; and, on their finally returning to the tents, they found their guards killed, and the whole encampment plundered and destroyed by fire!

Thus, for want of a substantial enemy wherewith to contend, each campaign was, of necessity, terminated before any decisive blow could be struck; and while the Royal troops were greatly thinned in their numbers, by fatigue and famine, as well as by the ceaseless assaults of their enemies, the hardy Islesmen, trained to hardships, and inured to almost daily privations from their infancy, thought little of their toils and dangers. Indeed, they were often enriched by considerable booty, carried off from the enemies’ camps; and, in reality, they almost always triumphed over their formidable, numerous, and well-disciplined foes, by stratagem, and the skilful employment of the most approved tactics then known in Highland warfare.]

May 13, 1609.—SIR JAMES MAKONEILL of Knokrynfay, kny^t.¹

Dilaitit of airt and pairt of the treffonable Raifeing of ffyre and burning of the hous of Askomell in Kyntyre, in the moneth of Januare, I^m.V^c.lxxxxvij yeiris; and vtheris treffonabill crymes, contenit in his DITTAY vnderwrittin.

SIR JAMES MAKONEILL of Knokrynfay, kny^t, 3e ar indyttit and accufet: Forfamekill as, frome 3our verrie 3outhie, 3e, being tranet vp in all maner of crewall barbaritie and wicketnes, and following the pernicious exampill of 3our godles parentis, kynfinen and cuntrie people, haifing committed infinit Opprefiones and violences aganis sic perfones as 3e millykit, in 3e cuntreyis of Kynntyre, Ila, and vtheris Hielandis Iles of this Kingdome, to the heich offence of God, displefour of the Kingis Maiestie, contempt of his authoritie, and violatioun of his Lawis: For forder manifestatioun of 3oure extreame and maift vnnaturall mischancie,² vnderstanding pat 3e fones of 3e vmq^{1c} Tutour of Loupe war in 3our faperis hous of Askomell, in Kyntyre, and that the Laird of Loupe (quho

¹ See Jul. 3, 1615, &c.

² Recklessness, wickedness. Old Fr. *meschanceté*.

had flane 3our fader¹) was verrie defyrous to haif pair lyves ; 3e, accunpaneit with 3our broper, Angus Oig, and the said Laird of Loupe, with tua or thre hundreth barbarus, wikked and bludie Hieland-men, foirneris, and avowed maliefactouris, all bodin in feir of weir, with hagbutis, pistolettis and vtheris forbidden wappones, vpon the . . .² day of Januar (fyftene dayis or pairby eftir 3ule) in þe 3eir of God, I^m.V^c. fourfcoir fevintene 3eiris, (1597) come in the nycht to the said hous of Askomell, quhair þe said Tutour of Loupis fones war, takand þe nychtis rest, lipning for no trubill, danger or invasioun to haif bene maid be ony man aganis þame ; and invironed þe famyn, in all fydis, with grit numberis of 3our airmet men ; and about þe brek of day, calling in to theas who war within, to rander þe hous and þame selffis to 3ow, thay, for feir of pair lyves and of þe mercieles crewaltie of 3ow and 3our bludie affisteris, refusieing to rander ; albeit 3e knew that Angus M^cconceill,³ 3our faper, was within the hous, with whome 3e had privat and freindlie meiting and conference that same nycht, and had pairtit frome him in sic professioun of love and naturall dentie and reuerence, as 3e had presentit and gevin to him ane pair of pistolettis : NEUERÞELES, casting of all bandis and respectis of conscience, honestie, and of nature, to 3our faper, and to 3our moþer Fynwall Nikelane,⁴ quhome 3e knew to be also within þe said hous, 3e godleslie, barbaruslie, viprouslie and tressonabillie, be 3our self and 3our complices, in 3our name, of 3our causing, command, assistance and ratihabitioun, set fyre in all þe four coirneris of þe said hous ; quhairby 3our saidis parentis, and haill remanent perfonas being within þe said hous, being brocht at þe verrie instant to extreme danger of pair lyves, and 3our moþer crying out to 3ow, ‘ THIEF ! Will thow burne thy moþer ? ’ 3e nawayis causit stay or slokin⁵ þe fyre, bot sufferit þe famyn to rage, quhill⁶ þe ruif of þe hous began to fall ; and 3our faper, haifing sufferit most crewall extremitie, and being brunt in thre or four pairtis of his body with þat fyre, was forcet to rusch to the dur, quhair 3e had prepairit ane number of grit treyis to be laid croce þe dur, aþer to stay his furth cuming, to þe effect he micht be brunt within the hous, or micht be so hinderit in his furthcuming, as he sould indoutitlie fall in 3our mercieles handis : Accordiing to the quhilk proiect, he, falling amangis þe said treyis, was pudillit in ane myre⁷ be 3our servandis, in 3our sicht ; and þaireftir transportit, in his sark, to Smerbie, tuo myles distant from Askomell, quhair 3e fetterit him in irnes, with ane vther

¹ Probably father-in-law ; the father of Margaret Campbell, his wife. ² ‘ Threttein ’ is partially erased.

³ Angus Macdonald of Dynnievaig and Glynnes. ⁴ *Nyc*, ‘ daughter,’ is sometimes, in the public Records, used as a prefix to the patronymic, in the case of a female. *Mac*, ‘ son,’ is the masculine, though, in modern practice, generally used indiscriminately for the patronymic of both sexes. *Nik* is considered to be a compound of *Nyn* and *Vic*, which is the genitive of *Mac*. *Nik* thus signifies *Daughter of the son of*, or *Grand-daughter of*. This Lady was a daughter of Maclane of Dowart. See Vol. I. 224, Jan. 9, 1590-1.

⁵ Quench, *slake*, extinguish. ⁶ Until. ⁷ Dragged through a miry puddle.

of 3our priffoneris, and detenit him in þat moſt vnnaturall, mercieles and miſerabill eſtair, be þe ſpace of ane quarter of ane 3eir: AND ſua, be þe crewall and wilfull ffyre-raiſing, committit be 3ow, and vþeris in 3our name, of 3our cauſing, command, aſſiſtance and ratihabitoun, in maner aboue writtin, quhairof 3e war and ar air and pairt; 3e committit moſt heigh and manifefſt Treafone, and aucht and ſould be pwneift pairfore, accoirding to þe Lawis and practik of this realme: Quhilk is notourlie knawin, and 3e can nocht deny. SECUNDLIE, 3e ar indytit and accuſet, fforſamekill as his Maieſtie, (quhome þe warld knowis, and þis cuntrie hes evir experimentit to be ane moſt godlie, juſt, and gracious Prince,) deſteting 3our vnnaturall crewaltie and wikketnes, haifing cauſit tak and apprehend 3ow, and commit 3ow to waird in þe Caſtell of Blaknes, for þe ſaid treſſonable cryme of ffyre-raiſing, committit be 3ow at þe tyme and in maner foirſaid, and many vtheris 3our haynous offences and crymes, 3e, in the moneth of, or pairby, þe 3eir of God 1604 3eiris, moſt treſſonabillie interpryſet, be þe aſſiſtance of ſum of 3our auld complices, to haif treſſonabillie foreet þe ſaid Caſtell of Blaknes: Quhilk purpois being diſcloſet and diſapointit, and 3e, for 3our moir ſaiſ keeping, being tranſportit to þe Caſtell of Edinburgh, 3e pair lykwayis interpryſet, in the moneth of, the 3eir of God I^m.Vj^c. and ſax 3eiris, and prepared meanis to haif brokin 3our waird: And being alſo diſapointit of that attempt, 3e war pairin detenit in irnes, till at laſt, in the monethis of Nouember and December, the 3eir of God 1607 3eiris, 3e treſſonabillie conſultit, devyſet, reſoluēt, and concludit with Johne Lord Maxwall, and Robert Maxwall callit of þe Tour, being bothe his Maieſteis Wardouris,¹ fforceable, violentlie and treſſonabillie to force his Maieſteis Caſtell of Edinburgh, and brek waird furth pair-of; conforme to þe quhilk reſolution, 3e and 3our ſaidis complices, vpone þe day of December, the 3eir of God I^m.Vj^c. and ſevin 3eiris, haveing prepairit all thingis neceſſar for execution of 3our devillifch proiect, be ſubteill meanis, maid 3our ſelffis maſteris of 3our keiperis wapones; and than ruſching furth of þe chahner, and loking pame in within þe ſame, quhairby thay ſould naper be able to ſtay 3our purpois, nor to diſcouer 3ow, 3e come to þe Inner-3et of the ſaid Caſtell, quhair, being accompanyeit with þe ſaid Lord Maxwall and Robert Maxwall, with drawin ſuordis in 3our handis, 3e treſſonabillie invaidit Alexander Struperis,² keiper of þe ſaid 3ett, for his ſlauchter; and becaus he, accoirding to his dentie, reſiſted 3ow in 3our ſaid treſſonabill interpryſe, 3e gaif him dyuerſe grit and dangerous woundis in his heid and airme, to the grit eſſuſioun of his bluid and danger of his lyfe; and haifing left him lying for deid, 3e and 3our ſaid complices forceable and treſſonable opnit þe ſaid Inner-3et, quhair

¹ Prisoners, persons detained in ward or captivity; not *Warders*, in the English ſeuſe of the word,
² Struthers.

3e lykwayis vnhoneſtlie, crewallie, and treſſonabillie hurt and woundit Margaret Phillope, wyfe to the ſaid Alexander, in þe heid, with 3our ſuordis, to þe grit effuſioun of hir bluid, and left hir alſo lying for deid: And then, haifing no forder reſiſtance, 3e 3eid¹ forwartis to þe Myd-3et of the ſaid Caſtell; and þair 3e and þe ſaid Lord Maxwell treſſonabillie inuaidit Archibald Cunninghame, Maifter-porter of þe ſaid Caſtell, for his ſlauchter; and becaus he wald nocht delyuer to 3ow þe keyis of þe ſaid 3et, 3e gaif him ane grit and dangerus ſtraik, in þe left airme; be þe paine quhairof, and abundance of þe bluid rynning frome him, he being almoſt in ſound,² 3e reft the keyis frome him, and treſſonabillie forcet þe ſaid 3et, and paſt furth þairat; and than going to þe Bak-wall, 3e and 3our ſaidis complices lap ouer þe ſame; and þairby treſſonablie brak þe ſaid waird, and fled to haif eſcaipid; quhill³ 3e, being followit be þe Conſtable of þe ſaid Caſtell, and vberis, his Maieſteis guid and faithfull ſubiectis, 3e war tane and brocht bak to þe ſaid Caſtell. QUHILKIS treſſonabill crymes war moſt wicketlie and contemptiouflie committit be 3ow and 3our ſaidis complices; and 3e war and ar airt and pairt þairof: And þairfoir aucht and ſould be pwneiſchet be tynfall and ſforfaltour of 3our lyfe, landis and guidis; accoirding to þe lawis and practik of þis realme.

THE ſaid Sir James, eftir reding of the ſaid Dittay, produceit certane Articles; togidder with ane Inſtrument, of the dait of thir presentis, quhair Margaret Campbell, his ſpous, paſt to Mr Johnne Ruffell, Aduocat, and preſentit him the Counſallis Warrant to compeir in his defence; quha refuſit to compeir, as the Inſtrument beris: And als produceit the Lordis of Secreit Counſall Warrant and delyuerance, quhair thay grant Licence to procuratouris to compeir. Quhilkis being red, the Aduocat tuik inſtrumentis thairvpoun, and ſpeciallie, vpoun the productioun of the Warrant gewin be the Lordis of Secreit Counſall to Aduocattis to compeir.—The Aduocat produceit ane Act of Counſall, for his Warrant to inſiſt in perſuit of Sir James Mcconnell.

Mr Johnne Ruffell, Aduocat, compeirand judiciallie, in prefens of the Juſtice, declairit he wald nocht compeir in defence of the pannell, without his Maieſteis ſpeciall Warrant and Commiſſioun, commanding him to compeir.⁴

THE Juſtice declairit and anſuerit to the ſaid Mr Johnne, that gif he wald compeir, bayth the Act of Parliament gevis him Licence, and the Counſall hes gevin him ane particular Warrant for his compeirance: And thairfoir, gif he

¹ Went.

² In a swoon or fainting-fit.

³ Until.

⁴ This refusal does not seem to have proceeded from personal fear of the consequences of undertaking this defence; for in numerous instances, this learned man undertook as desperate cases; and in the present instance, he had a special Licence. It must have proceeded from the utter hopelessness of Makconell's defence; and the detestation naturally felt at the almost unparalleled cruelties committed by this ferocious barbarian. He absolutely refused to appear, unless *commanded* by his Majesty.

will nocht compeir,—delay nocht the Jugement ony langer.—The said Mr Johnne refuisset altogidder to compeir.

Quhilk Dittay, eftir reiding thair of oppinlie in Judgement, the Justice stand relevant: And thairfoir referrit the samyn to the knowlege of ane Assyse, of the perfonen following.

ASSISA.

Andro Lord Stewart of Vchiltre,	Rob ^t Chennen of Chennentoun,	W ^m Sinclair of May, younger,
The Laird of Drumlanerig, elder,	David Arnote of Chapell,	Mr Frances Bothuell, brother to
Sir James Douglas, kny ^t ,	James Tennent of Lennox,	my Lord Halyrudhous,
Sir James Cunninghame of	(Linhouse,) William Trumbill of Airdrie,	
Glengarnock,	Thomas Sibbald, Tutour of	Johnne Johnnestoun, Bailzie of
Mr Robert Fawfyde, elder, of	Rankelour,	the Watter of Leith,
that ilk,	Sir James Balfoure, brother to	Johnne Achiefoun, portioner of
Laurence Gordoun of Glenluce,	my Lord of Burlie,	Innerask.

The said Sir James produceit to the Assyse ane Warrant, subscryuit be his Maiestie, allowing¹ the taking of his father Angus M^cconceill, the maner, forme, and circumstances done thairin; quhilk is of the dait, att falkland, the aucht day of August 1598: Quhilk he tuik vp agane, and wald not vse.

It was allegeit (by the pannell,) that ony verificatioun that is producet of Depositionis, tane be my Lord of Ergyll, can nocht be availzeable; in respect my Lord Ergyll hes mellit with his blude and leving.

Our said fouerane lordis Aduocat, for verificatioun of the said Dittay, producet to the saidis perfonen of Assyse, Angus M^cconceill of Dynnievaig, father to the said Sir James, and Fynwall Nickelane, his mother, thair Depositiones; togidder with his awin Depositiones; made be thame, in presens of the Lordis of his hienes Counfall; for verifeing that article and poynt of Dittay, anent the raising of the ffyre, and burning of the hous of Alkomell. And siclyk, for verificatioun of the last article of Dittay, repeittit the said Sir James awin Judicial Confessioun, maid be him in the said Justice and Assysouris presence; confessing the breking of the said waird of the Castell of Edinburgh: And als produceit, for verificatioun thair of, the saidis Archibald Cunninghame, Maister-porter, and Alexander Strutheris, thair Depositiones maid and subscryuit be thame, in presens of the saidis Lordis of Counfall; quhilkis tua Depositiones was ratifeit and approvyn, in Judgement, be the saidis Archibald and Alexander, in presens of the said Sir James: Quhilkis our fouerane lordis Aduocat also repeitit. And in respect thair of, protestit for Wilfull Errour, in cais the saidis perfonen of Assyse Clange or Acquit him of the saidis crymes.

VERDICT. The Assyse, be the mouth of the said Andro Lord Stewart of

¹ Sanctioning, permitting; not *admitting* or *confessing*, as the word usually signified, in ancient legal pleadings.

Vchiltrie, all in ane voce, ffind, pronuncet and declarit the said SIR JAMES M'CONNELL of Knokrynfay, knycht, to be Giltie and convict of airt and pairt of the Raifeing of ffyre in the hous of Alkomell and burning of the famyn, accoording to his Dittay, in all poyntis; cleirlye verifeit to thame be his awin Depositiones, and vtheris probationes producet in proces. AND lykwayis, the saidis perfones of Assyfe, all in ane voce, ffind, pronuncet and declairit the said Sir James to be Giltie, culpable and convict of the Breking of his Maieftis waird of the Castell of Edinburgh: And of airt and pairt of the forcing of the zettis of the said waird: And of airt and pairt of Hurting and Wounding of Archibald Cunninghame, Maister-porter, Alexander Strutheris and Margaret Phillope, his spous, ordiner fervandis and porteris of the said Castell.

SENTENCE. To be tane to the place of his Execution, and thair to be demanit and execute as ane tratour; and his heid to be strukkin frome his body;¹ and all his landis, heritages, barroneis, takis, fteidingis, rowmes, possessiones, coirnes, cattell, inficht pleniffing and annuelrentis, guidis and geir pertening to him, to be fforfaltit, efcheit and inbrocht to our fouerane lordis vsê: as convict and culpable of the saidis crymes.

APPENDIX OF ORIGINAL PAPERS.²

[THE following Documents are carefully taken from the Originals, which are preserved in Sir James Balfour's Collection of MSS. Advocates' Library. Had the Editor been earlier informed of Mr Gregory's proposed History of the Isles, &c. he would have left it to that gentleman to give the substance of them. It was, however, too late to cancel this Appendix; but indeed, this is the less to be regretted, as it is believed that Mr Gregory merely intends to give the spirit of such Papers as the present, and to incorporate the information conveyed, in the body of his work; which is all that is necessary for such historical purposes.]

I. DEPOSITION of *Sir James Makconell*.³

AT the Castell of Edinburghe, the xv day of Januare, 1608, in prefence of my Lord Aduocat, and Mr William Hairs, Justice depute, and Sir Johnne Arnote, Thesaurare depute.

SIR JAMES M'CONNELL, knycht, sworne and demandit, How lang is it fen he hes bene detenit and haldin prifoner? Deponis, that he wes tane be his fader, in Kintyre, vpoun informatioun maid to his fader, that he wes to tak some courfe aganis him; and efter he had remanit ane certane space with his fader, he wes delyuerit be his fader to *Auchinbrek*,⁴ be whome he wes detenit ane certane space; and

¹ It has already been stated, in the Notice prefixed to this Trial, that Sir James Makconell was not executed; but that he again effected his escape, went to Spain, and returned in the reign of King Charles I, from whom he received a large pension, and died a natural death, in England, in 1626.

² The remaining Papers fall more properly under the proceedings against *Angus Oig*, Jul. 3, 1615, where they shall be inserted.

³ From the Original, preserved among the Warrants of the Privy Council, General Register House.

⁴ Sir Dougald Campbell.

thairefter delyuerit to *the Erll of Ergyll*, who keipit him whill he wes chargeit be *THE COUNSAILL* to exhibite him; quhilk he did at Sanct Johnneftoun: fra that, he wes fend to the Castell of Blaknes. Demandit, yf at ony tyme he had tane his fader? Deponis, that he tuke him in Kintyre, in ane houe callit *Afkomihue*, the deponer haneing his bruther, young Angus, (and) a company of the gentilmens of Kintyre with him. And that this wes about Candilmes, aucht yeir fyne, or thairby. Denyis that he rafed ony fyre in the houe; and depones, that he hes Warrant of *HES MAJESTIE*, allowing¹ the taking of his fader as gude seruice.

Anent the interprise of his Breking of Warde furth of the Castle of Edinburgh, and demandit yf he wes the first mover to *THE LORD MAXUELL*, or yf the *Lord Maxwell* wes the mover thair of to him? Deponis, that vpoun Sunday at even, afoir the interprise, *Robert Maxwell of Dynwiddie* come to the deponer, and tauld him, that within few dayis he fould heir the best newis that he had hard this lang tyme bigane; and the deponer anfuerit, that he wald fane heir gude newis. And the deponer infisting with Robert, diuers times thairefter, to haif vnderftand quhat gude newis thefe wes? Robert evir conceillit the mater, whill² Fryday thairefter, quhilk wes the day that thair interpryse wes putt in executioun. And grantis, that the said Robert cam to the deponer, about tua efter none, and putt him in remembrance of the wordis that he had spoken to him vpoun the Sunday preceding; and tauld him, that that nyght *the Lord Maxwell* wes to brek warde, and wald tak the deponer with him; and craved the deponeris opinioun, quhat he thocht of that mater? To whome it wes anfuerit, be the deponer, that the executioun of that interprise wes fa suddanelie to be done, that the deponer could gif no avife thairin; and he thocht that *the Lord Maxwell* fould haif communicat that mater to him felf, yf he wald haif had him to be ane affifter thairin. And depones, that fchortlie thairefter, about foure efter none, *the Lord Maxwell* come in to the deponer, satt down beyde him, drank tua pypis of tabaca,³ and fpak no thing of his interprise to the deponer, quhill the deponer past to the windo, to haif maid watter. *The Lord Maxwell* come to him to the windo, and tauld him, that he wes refolued that nyght to efchapp and brek warde; and defyrit the deponer to prepar him to go with him; for he had men attending vpoun the yettis, to hald them oppin, and had horfes awaiting vpoun the feildis to carry thame away:⁴ And the deponer anfuerit to *the Lord Maxwell*, that fik ane interprise required goode advife and deliberatioun; and defirit him not to be suddane, bot to be weil advifit and refolued thairin. To whome the Lord replyis, ‘Tufhe, man! sic interpryses ar nocht effectuat with deliberationis and advifments, bot with suddane resolutionis!’ And then the Lord caufit fetch in tua quartis of wyne; and, haveing maid fome confaitis of pastyme in the houe, he defirit *William Simfone*, ane of the deponeris keiparis, to gif him his fwerd; whilk he refufeing to rander, he thored the said William, held ane drawin quhingear quhilk he tuke fra William Maxwell, avowing to haif his lyfe, yf he randerit nocht the fwerd; and fua, violentlie tuke the fwerd fra Simfone: Tuk ane vther fwerd fra *James Stewart*, ane vther of the deponeris keiparis; and tuke ane vther fwerd fra *William Armeftange of the Gyngellis*: And haneing the fwerdis, he then tauld planelie, that he wald brek warde; and fayed to *Young Clofburne*, ‘Yee ar heir for a civile caus, yf it pleis yow to go, yee falbe welcome!’ And *Clofburne* defisting, *the Lord Maxwell*, with *Robert of Dynwiddie*, *William of Kirkhous*, and the deponer, past out of the chalmer, and come to the yettis; quhair fum of the portaris wer hurte: Bot denyis that he hurte ony of thame him felf. And fua, haneing forceit the yettis, they lap ower the wall. Demandit yff *William Maxwell* delt with the deponer in this interprise? Deponis, vpoun his aithe, that he nevir delt with the deponer in that mater; and that he knawis no thing of Williames doing; bot that he oppynnit the Nether-yett of the turnepyke, quhare the deponeris chalmer is.

(Sic fubfcribitur) S^r J. MAKDONALL. S^r T. HAMILTON. S^r J. ARNOTE. M^r W^m HEART.

¹ Admitting, approving of, acknowledging. ² Until. ³ This was a phrase in common use, shortly after the introduction of tobacco into Scotland. The Editor has seen the term ‘quaff’ similarly used, which may be the origin of ‘whiff,’ a vulgar phrase now in use. ⁴ See the particulars of this desperate and admirably executed escape, in the Trial of John, Lord Maxwell, Jun. 24, 1609.

II. LETTER, *Sir James Mackconell to the Duke of Lennox.*¹

PLEIS YOUR GRACE,

I AM in verie greit misery, as this beirar can tell. Your grace knawis I have depended vpon your fawor, befor I was put to this miserie; and now, I wil befeik your grace to gett his Ma^{tie} power to taik ordour with me, at your graces cuming heir. I am willing to axceptt quhatt his Ma^{te} wil bestow on me, ather in my awin kyndly roume, or in oney vther pairtt of his Kingdwmes; and fall find causione for my obedience; quilk I will befeik your grace to report to his Ma^{te}, and patt your grace will gett me patt fawor as to be bainishid, rather or I be in this miserie. As for my bastard brother, quha hes brokin your graces ward, iff your grace taik ane doing for me, and taik me in your awin hand, I fall find pe way he salbe putt in your graces reverence, as he was befor. Befeiking your grace to remember my miserie, and gett me libertie or banishment. I rest on your graces favorable doing, quhatt I vrett anentt Archibald, Your grace will hald it quyet till your grace cum hame.

FROM ED^R CASTELL,

Your graces serwand duiring lyfe,

27 Junij, 1607.

S^R J. MACDONALL.

To my very gud Lord, my Lord DUKE OF LENNOX.

III. LETTER, *Sir James Makconell to the King.*

MY GRACIOUS SOVERAN,

MAY it pleis your Maiestie to apardoune my importunitie, being inforfid pairto, throw the grett misery q^{lk} I aknawleg to have maist justly deseruid, for my bypast offences towardis God and your Ma^{tie}: Sett my foueran, your Ma^{tie} hes graciously forgiuein gretter offenceis; zea, the grettest Trefon zatt euer was deuyfid aganist aney Prence, zour hienes hes forgiwein. For Chrystis caus, Sir, ance forgiue me my bypast offenceis, and with Godis grace I fall euer behawe my selff deuntiffully heirefter; and fall find caution to obey quhatt your Ma^{tie} will injune² to me; befeiking pat pe Declaratioun of your Ma^{ties} will may be sent to pe Confall; seing, without pe same I can gett na ansuer of pair Lordchipis. Humblie kissing your Ma^{tie} handis, I commit your Ma^{te} ewer to Godis protectione.

Your Maiesties maist humble and puir subiect

FROM EDINBRUCHE CASTELL,

to be imployid to dethe,

28 of Junj (1607.)

S^R J. MAKDONALL.

TO THE KING HIS MAIST EXCELLENT MAIESTIE.

IV. LETTER, *Sir James Makconell to the Earl of Caithnes.*³

MY VERIE HONOURABLE GUD (LORD,)

FEIRING that your lo., to whose fawor I am so much obisid,⁴ suld not mistaik pe caus of this my last offence, in braicking of Ward, I haue beine this⁵ bauld to vrytt to your lo. the only mofion quhilk, I protest to God, maid me to braik Ward. It is trew, my lord, patt *the Laird of Calder* said to honest men, wha can beir record, patt how soever my pairt was anent Donnoveg, sett he had ane Warrant past be HIS MA^{TES} hand, quhilkis pe *Confall* saw nott, to command pe *Confall*, presently efter pe sight of patt Warrant, to putt me to exsecutioun; and how lyttill refone I had to trust my lyfe to *Calder*, your lo. self and vthers of pe *Counfall* knawis; for, be his misreport, he did all he culd to have perallid my lyfe. And pis trewly was pe caus I fled with my avin lyfe, and for no mistrust I had in HIS MA^{TES} clemence, or in *the Confallis* fawor; nor sett, for oney feir I had off oney thing pay culd try aganes me, anentt Dunoveg; for as I said when I was in ward, I will say now; God is my vittnes, my pairtt, ever, anent pe taiking or keiping of Dunoveg aganes HIS MA^{TE}, hes beine ever most

¹ This and the following Letters are from the Originals preserved among the *Denmylne MSS.* Adv. Library. When procured from other sources, the circumstance is explained in the Notes. ² Enjoin. ³ George, fifth Earl of Caithness. He married Jean, only daughter of George, fifth Earl of Huntley. ⁴ Obliged. ⁵ Thus.

honeft and lyall;¹ and efter all juft tryall, I will defy my onfreindis² prive³ vtherwayis. And fence pe braik of Waird I maid with pe *Lord Maxwell*,⁴ by⁵ my expectionne, to þis night I brak Ward laft, be God him felf, I was never privie nor a confenter to aney Platt aganes HIS MA^{TE} or my cuntre, I mein his MA^{TES} dominions. And now, feing my braik of Ward was nott, as God is my judge, for no defyre of Rebellion, nor no vther defing,⁶ bott only for faiftie of my avin pur lyfe, I will moft humble befeik your lo. fpeik fuch as is your freindis in *Confall*, patt HIS MA^{TE} might be moveid, nott to tak no hefte or violent curfe⁷ aganis me, onto⁸ the tyme thatt pair lo^s will heir my Peticione. And give⁹ your lo. will gett me pat fawor that my Peticion falbe hard, and patt oney whom I fall fend with my Letters to your lo. fall nott be trubled; and I being advertesid by your lo., I will, be your lo^s advyfe, do aney thing patt may beft fatisfie HIS MA^{TE} and *Confall*; my lyfe, and the lyfis of thefe patt helpid to faif my lyfe being faiff. So, with pe remembrance of my humble deute, I reft

Your lo^s pur freind euer to ferve you,

S^R J. MAKDONALL.

To my verie honourable gud lord, my Lord ERLE OF CAITHNES.

V. LETTER, *Sir James Makconeill to the Earl of Caithnes.*

MY VERIE HONORABLE GOOD LORD,

PLEAS your lo., the ondeferued fauour and courtesee which I refaued by your lo., in showing your felue my frend, that tyme at Court, when my onfrendes did misreporte of me to his Maieftie, makes me now this bold to befeek your lo. to continew my frend, according to my reafonable fute. And, in fpeciall, that your lo. will meane my caife to your frendes in Counfall; for I proteft my beeng ten yeeres in warde in the Caftle of Edinburgh, and the difponeing of my kyndlje landes, made me not fo much to tak that haiftie refolution to efheap, as when I was affured, by his owine frendes reportes, that my lyf wes geven over in *the Larde of Caddelles* handis; who beeing, as your lo. knowes, nowife my frend, or one to truft my lyf to; alwife¹⁰ now I befeek your lo., as yee fhall till death have my poore fervice, try by the Counfall, yf vpone any conditiones, not diminifhing his Maiefteis comoditie,¹¹ I may have this peece of old poffeffiounes, which is Illa, to fufteane my felue and all my kinne that now folowes me; that his Maieftie may have his owine, with honour and eafe, and wee to leeeve in peace and offend no manne, and I, getting furetie of my lyff and of this peece land, fhall find fufficient fuiretie, both for my obedyance and good ordour, keeping by all my kinne and frendes. As your lo. learns in this, or can be hable to do me fauour in getting me his Maiefteis peace, your lo. will aduertefe me. And I befeech your lo., fo far as you can, croffe *the Campbells* to gett any employmentes againes me—for they caire not how much they trouble the countree¹² and put his Maieftie to charges needles. As for the Houfe of Dwnoveg, I tooke it from *Calderis* menne, in the fpace of one day,¹³—killed parte of thame, vpone the Greene of the Houfe,—chaifed in the reft,—tooke there watter and the two Barmkines¹⁴ from tham,—and forced thame to yeeld in my will, the next morning. So I have the Houfe, neuer to be gevin to thefe that is not worthie of it. But yett, his Maieftie may ever command it and my felue, I feeng how I may leeeve with the affurance of my lyff and my poore frendes. So, abyding your lo. aduertefment, with the remembrance of my humble fervice, I fhall ever remaine,

Your lo. affured frend to ferve you,

S^R J. MAKDONALL.

ILA, 2 Julii.

I BESEECH your lo. let me know how *my lord Secretar* is towards me?—Or who is moft for *Calder*?—Or how he is now thought of be HIS MA^{TE}?

TO THE ERLE OF CAITHNES.

¹ *Leal*, loyal. ² Enemies. ³ Prove. ⁴ See Lord Maxwell's Trial, Jun. 14, 1609. ⁵ Against, contrary to. ⁶ Design. ⁷ Course. ⁸ Until. ⁹ If. ¹⁰ At all events; nevertheless. ¹¹ Pecuniary interests; the King's Rental. ¹² Disturb the public peace. ¹³ See p. 14, &c. ¹⁴ Fr. *Barbacane*, i. e. *propugnaculum antemurale*; being the outer fortified works or ramparts of the Castle. There wer often several lines of circumvallation, to prevent surprises.

VI. LETTER, *Sir James Makconcell to the Earl of Caithnes.*

MY LORD,

GEVE the *Confall* be curius to knaw whom it was patt *Calder*¹ fend to, he had the Warand for taiking my lyfe. The *Pryar of Ardhattan*² and *M'kwoll*³ his sone, *Allan M'dowgall* is my authours; and they will not, nor can not deny itt. Also *Calder's* avin agent, *James Movatt*, maid no secreitt pairof; for he tauld it both to the *Erle of Crawford*⁴ and to *M'intois*.⁵ I wald not nov, becaus I had nott ane beirar of my avin, haifart to vryt to pe *Secrettar*,⁶ bott itt is only in your lo. and his lo. patt I truft. I know *Calder* and pe *Cambellis* wilbe buiffie to feik imployment of fervice aganes me; bott the same fall nott be neidfull, for your lo. and my Lord *Secrettar* may better bring me to that quhilk falbe moft to HIS MA^{TE} commodite and pe quyetnes of pe contre, without bestoving oney chargis nor all pe *Cambellis* liveand may or can do by HIS MA^{TES} fors, quhilk I will ever except; and honour, and respeck what your lo. wryttis to me, onles the *Confall* dereck one to me. Your lo. may fend your Letters to my lord *Tuillibairne*,⁷ to be sent be his lo. to the Officer of Lochaber, wha will fend same to me whair ever I be. So abyding your lo. anfuwer, I rest,

Your lo^s ever to serve you,

(Without date.)

S^R J. MAKDONALL.

To my verie honourable gud lord, my lord ERLE OF CAITTNES.

VII. LETTER, *Sir James Makconcell to the Bishop of the Isles*.⁸

MY VERIE GUD LORD,

I DOUTT nott bott, or⁹ now, your lo. hes hard of my braiking of Ward; and pe only caus quhilk maid me ventour pe same, quhilk, as God knawis, was for no vther caus bott only for pe saifte of my lyfe, quhilk pe *Laird of Calder* said was in his will only. Allways,¹⁰ prais to God, I am out of *Calder's* denger; and yett, geve¹¹ be oney meines I may have HIS MA^{TES} graciuss pardon to my self and these gentill men patt asisted me, I will latt your lo. fe HIS MA^{TE} commodite fall novayis be impaired, pe pace of pe contrie fall novayis be trublid, nor HIS MA^{TE} putt to no chargis, be giveing imployment to pe *Cambellis*, wha crawis ever to fish in drwmly¹² watters; and pairfoir, I pray your lo. deill with HIS MA^{TE} and *Confall*, for a continewatioun of oney violent curfe¹³ to be tane be HIS MA^{TE} aganis me, untill yow may gett one of your avin to cum to me; and with patt man, or with your lo. self, geve I know how to fie you, I fall fend such Offers as I hop fall content HIS MA^{TE} and *Confall*. So, as my trest is and was ever in your lo., I pray you vryt to me, what I may luik for? As for pat erand of Dwnveg, God is my vittnes, I am inofent pairof; and I pray your lo. try pat erand, as geve I war in ward; and I trest ge will find my pairrt honest. So, luiking your lo. anfver, I committ you to God; and rest

Your lo^s ever att command,

Junij 3.

S^R J. MAKDONALL.

I PRAY your lo. gett me Lifence to fend ane man or boy with my Letters to your lo.

To my verie gud Lord, my lord BISHOP OFF THE IYLLIS AND RAPHO.

¹ John Campbell of Calder, or Caddell, as he was often styled. ² . . . Campbell. ³ . . . M'Dougal of Dunollych, Laird of M'Dougal. ⁴ David, eleventh Earl of Crawford. ⁵ Sir Lauchlan MacIntosh of that Ilk, whose father, Angus, had married Lady Jean Campbell, daughter of Archibald Earl of Argyle.—*Douglas*. He was heritable Steward of Lochaber, and one of the Gentlemen of the Bedchamber to Prince Charles; and married Agnes, daughter of John Grant of that Ilk. ⁶ Lord Binning, afterwards Earl of Haddington. ⁷ William, second Earl of Tullibardine, who, for his services to the King, in the affair of Gowrie's Conspiracy, Aug. 5, 1600, had the heritable Sheriffship of Perthshire. His second wife, Lady Dorothea Stewart, being eldest daughter of John, fifth Earl of Atholl, and the male line having become extinct, their eldest son John was created Earl of Atholl.

⁸ From the Original, preserved among the *Denmylne MSS.* Adv. Library. Andrew Knox, Parson of Paisley, the first Protestant Bishop of the Isles, was translated to the See of Raphoe, in Ireland, but held both Bishoprics for some time. He assumed both titles. ⁹ Ere; before. ¹⁰ At all events; nevertheless. ¹¹ If.

¹² Who ever crave to fish in 'troubled waters.' A well-merited, though bitter, sarcasm. ¹³ Course.

VIII. LETTER, *Sir James Makcneill to the Bishop of the Isles.*

MY VERIE GOOD LORD,

PLEIS your Lo. war not I hard your lo. was in Ireland, and could find no meanes to wreit to yow, I was not four nightes out of Ed^e, quhan I would have writtin to your lo. as to one quhom I haue euer found my friend. And now, my Lord, I protest, albeit I was xij 3eires in waird, and all my kyndlie landis disponed to strangeres, my lyff left in his Maiesties handis, 3ett the same maid me not so myche to braik ward as it did quhan I was offered be the Laird of Calderes awin freendis, quha can not deny it, that his Maiestie, be his secreit Warrant, had gevine ower my lyff in the Laird of Calderes handis. And now, my lord, I protest to God my desyre is not to rebell or truble the Esteat of the cuntrie, bot serue his Maiestie with all humilitie, and mak my kin and freindis paceable men, iff I may haue his Maties pace, with the assuurance of my lyff and the lyfe of my puir freendis, and some meanes to susteine ws rather nor to fors ws, for want, to opres otheres. Heirfoir I beseeke your lo., seing my Race has bene tenne hundreth yeeris kyndlie Scottis men, vnder the Kinges of Scotland; and war I willing to leive vpoun ane puir pairt of that quhilkis our foirbeiraris had, and I to find gud furtie for all that becomes loyall subiectis to do, both for myself and my quholl kin that followes me, that 3our lo. will, as 3e euer did, interfeed for me at his Maties handis to sie quhat grace or fauour 3our lo. may obtien to me; and in specciall, to sie give, without diminisching his Maties commoditie, I may have the Iland to my self and my kin to susteine ws; wtherwayis that 3our lo. will get that fauour that no hefté curle falbe taine againes me, be geveing imployment to my onfreendis, till your lo. may have tyme first to speek with me; att quiche tyme, albeit I gett not the Iland, 3ett, provyding his Maiestie will hauld it in his awin hand, I will shaw your lo. how his Maties commoditie heir may be increffed, and I to be fatisfied, and this cuntrie to be frie of ony truble of me or my freendis.

As for this Hous of Dunovege, I protest to God, give aither his Maisteis Gaird or your lo^s men war keepares of it, I wald neuer enter within it, albeit it war without keeping—bot finding in it such as serued them quha foght my lyf and landis, and quho crewally opprest this puir Iland in such fort, that I protest to God thair defing was rather to waist it, nor mak it able to pay his Maties rentes. The same maid me preferwe the hous; and albeit that Hous cost his Matie muche money in putting it in Calderis handis, it pleased God that, in one day (I took it), with the lose bot of one man. And now if your lo. may get me ony fauourable conditiones be his Matie, 3e may assuir 3our self I will give yow the Hous, provyding it be in your handis, and nane of the *Cambellis* to gett it. As your lo. does in this, or is lyk to do, adverteis me. And so, reposeing in your lo^s constand freendship, I committ your lo. to God, and restis

Your lo^s ever assuired to command,S^r J. MAKDONALL.

IN hope, with Goddis grace, I will geve 3our lo. 3itt ane better propyne, I pray your lo. send me ane Inventare¹ with this bearer, for I am far from the clock.

S^r J. MAKDONALL.

TO THE BISCHOP OF THE ILLIS.

IX. LETTER, *Sir James Makcneill to the Privy Counsell of Scotland.*²

MY VERIE HONOURABLE GUD LORDS,

PLEIS 3our lo^s, my offence in braiking ward fuld mak me to be loth to presume to vrytt vnto 3our lo^s, 3ett, seiring the mosioun quhilik maid me to eschep fuld be vtherwayis thoct be 3our lo^s nor the trewth of my intencion, I am this³ bauld to deleaitt vnto 3our lo^s the only caus quhilik maid me to braik ward; and this is itt. *The Laird of Calder* said to twa fewerall honest gentillmen, patt how

¹ This is from a copy. The word should be 'mounter,' Fr. *montre*, a watch. ² In a Letter from Lord Binning to Lord Tullibardin, Jun. 13, 1615, he states that the Council would not forward such Letters to the King; and that 'so long as he remaynes within his Maties dominions, and hes societie and dealing with rebellis and broken men, I cannot expect that his Petitions can be received be his Matie, vnles he wold do such notable service aganis some principall Rebellis, as might perswade his Matie to think him wourthie of mercie!' ³ Thus.

foever my tryall past anent the erand of Dwnoveg, 3ett he had ane Warand, in his avin keiping, past be his MA^{TE} quhilk pe *Confall* novayis did sie, commanding, immediatly efter the presenting pairof to putt me to exsecutione, butt¹ farther profes; and so, my lyfe as itt war gevin be HIS MA^{TE} over in the hands of him wha had not only medlid with my kyndly lands, my frends lyfes, and withall pe only man who reportid warft of my self, to haue gottin my lyfe with my lands, pe only feir pairof maid me flie with my lyfe, and no desire of Rebellion; nether aney mistrust I had of HIS MA^{TES} clemencie, nor of your lo^s favor; nether wald I braik ward for oney thing (they) culd try aganes me, anent pe erand of *Dunoveg*; for God is my vittnes I am inofent pairof. And I beseik 3our lo^s try pe same, as giwe² I war in ward to be accusid, and I trest your lo^s fall find my pairt, in all that buissines, honest and loyall. And now I will, in all humilyté, beseik 3our lo^s to pité my cace, and grant me patt fauor as to suffer me to fend in ane humble Peticione to 3our lo^s, be the quhilk I hop to give such satisfacion to HIS MA^{TE} and 3our lo^s as I may best, to satisfe his Ma^{tes} will and your lo^s in all thingis, my avin lyfe and these wha hes assitid me being saiffe. And, in pe meintyme, praye your lo^s most humblé, befor I be hard, not to wis³ oney violent curse aganes me, ether to putt his Ma^{te} to expenceis, and me to disparatione. So, beseiking pe grett God to move HIS MA^{TES} hartt and your lo^s to pité me, according to the intencione I have to be ane paceable man, with the assuurance of my lyfe; only luiking your lo^s will latt me know what fauor I may luik for, committing your lo^s in Gods protextione, I humbly taks my live, and rests

Your lo^s humble servitour,

Junij 3.

S^R J. MAKDONALL.

To my verie honourable gud Lords, my LORD CHANCELLAR of SCOTLAND, and the remenent of HIS MA^{TES} honourable PRIVIE CONSALL.

X. LETTER, *Sir James Makconeill to the Earl of Crawford.*⁴

MY VERIE HONORABLE GUD LORD,

It may be 3our lo. think it streng patt I obscurid my intencoun of braiking Ward, fra your lo., in regair of our luif and familiarité; 3ett I hop your lo. will excusis me. For pe reveilling pairof to your lo. nicht do 3ou hairme, being whair 3e ar, and no furthurance to my intencione. Allwayis, as God fall judge my faule, my braiking ward was nott throw aney mistrust I had in HIS MA^{TIS} clemencé, nor in the *Confalls* fauor, nor 3ett for feir of oney thing culd try aganes me, anent patt trefon of *Dunoveg*; bott the only thing which moued me was only thatt I was credably informid, be honest men, patt *C Calder* said it to (pame,) patt howsoever pe erand of *Dunoveg* 3ed,⁵ he had ane Warand past be HIS MA^{TE} patt com never in pe *Confalls* sicht, commanding to put me to exsecutione, immediatly efter pe presenting pairof. Your lo. self and *Mintois*⁶ nicht heir *James Movat* say pis; bott my authors ar better nor *James*. Allwayis,⁷ as I said aft⁸ to 3our lo. self, when I was in ward, I will now say; patt, as God fall judge my faule, I was never airt nor pairt of the taking or keiping of *Dunoveg* aganes HIS MA^{TE}, nor of no vther plaitt,⁹ fence pe braik of ward pat I maid with pe *Lord Maxwell* till now, and give¹⁰ efter such long misère of imprisonment, lose of lands, and kin, my braiking ward for pe saifté of my lyfe, be thoct be 3e sensuir of my onfreinds,¹¹ such ane offence as will not be pardonid, I most tak pacience; for I am better now, prais to God, nor¹² as I was; and I will, as long as I liwe, pray for HIS MA^{TE} long and prosperus regne. 3ett, seing give I be croft now, it cumis moir be my onfreinds nor be HIS MA^{TE}, albeitt I will never preis¹³ to lue long in HIS MA^{TES} dominions, by¹⁴ his hienes ovin will, altho I nicht; I wou to God, or¹⁵ I liwe¹⁶ pe contré, I, and moir nor I, fall ether lose our lyfes, or than I fall, God willing, liwe¹⁶ ane remembrance to my onfreinds; I mein only fik of pe *Cambellis* as wilbe my onfreinds, patt itt falbe hard of when both they and I is deid and gone! I hop, to pair

¹ Without.

² If.

³ Use.

⁴ David, *eleventh* Earl of Crawford.

⁵ Went.

⁶ Sir Lauchlan

MacIntosh of that ilk.

⁷ Nevertheless.

⁸ Often-times.

⁹ Plot.

¹⁰ If.

¹¹ Enemies.

¹² Than.

¹³ Strenuously endeavour; press.

¹⁴ In opposition to.

¹⁵ Ere; before.

¹⁶ Leave.

small commodité: Bott I had rather gett liwe¹ to live in pace, and find gud fuité for my obedience and gud ordour. I wilth to God, with HIS MAT^{ES} contentment, 3our lo. war ane fré man, both for your avin weill and pe weill of 3our friendis; and seing itt lyis in your avin hand, better be fré nor liwe pair with fik crofis as I knaw men will have in patt place.² I heir maney of the *Keipers* of patt *Castell* ar putt in ward, for my braik;³ bott, as God fall judge me, pair was nane of pe keipers of patt *Castell* pat ever I thocht to mak privé to my defing. I protest to God, I love pe gud *Constable* and all patt is pair. I haitt none of pame; bott I culd nott bott love my self befor. Thair is nane within patt *Castell* to whom I am adebted, pat falbe ouey wayis intrest⁴ be me, if God grant me HIS MAT^{ES} pace. I defyre *Petie Gilerif* keip my stare.⁵ Remember on our last discourse, patt fame nicht I braik ward, anent *Margarett*. Sik nowis as may nott be thocht offenceive, I pray your lo. vrytt to me. *My Lord Tuillibairne* and pe men of Atholl, on pat Fryday after I brak waird, persewid me so hardly, patt I was almost tane. We lost our hors, and all our clais. His lo. maid me to gett mair speid on fuitt, in one hour, nor⁶ I thocht to have gottin in ane 3eir, give⁷ fik fudent medefin⁸ had nott bein aplyid to me. Liewing⁹ to truble your lo. with longer discurse, wilhing 3ou ever all hap-pines, I rest
Your lo^s avin euer to command,

SR J. MAKDONALL.

I PRAY your lo. as 3e do vther thingis, lovfe¹⁰ my mvntour¹¹ fra *Pettfindie*, for 48 lib; and get my buiks fra him, and fra *Elizabeth Gib*. Sho hes twa buiks. Commend me to *Christiene*. When your lo. vrytis to me, send itt to my *Lord Tullibairne* to be sent to me. For sum of your lo^s avin perticular, I wald glaidly fê your man *William Rattra*, or oney of 3ours; the erand tuichis only 3our self. To my verie honourable gud lord, my lord ERLE OF CRAWFUIRD.

XI. LETTER, *Sir James Makconeill to the Earl of Craufurd.*

MY VERIE HONORABLE GOOD LORD,

I WES not four nightes out of the Castle when I wrotte to your lo., but be not sure if your lo. hes reffaued my Letter. I have now wrotten thir few lynes, praying your lo. to remember me 3our promese and conference with me. As for my felue, I am well, praifed be God, and all my kyndlie men hes reffaued me most glaidlie. I will do all I can to have HIS MAT^{ES} peace, and find also good fuiretie for my obedience and yeirle dewtie¹² as may suffice. And if my onefrendis crose me, I trest in God, how so euer the mater go, to be evin with thame. I pray your lo. see if it be possible yee may gett outhier manne or boy to come speak with me, and aduertese me moir of all your awin estate and dyett, and of all such newes as occurs. Any of my bookes that your lo. can gett, send them to me, and vse your moyen to gett from the Erle of Atholl the bookes that wes tane from me at that onfett in Atholl. They gatt the thrie converfiones of England, Burnes book, and it that Phillip sett out on the controverted heades, it 3e saw Makcartney wrotte, the Mekle old Cornikle, in wrett. Ther wes other bookes that I remember not, bot your lo. may seek thame all to your felue. I pray your lo. gett me word from Pittfindie, and try if I will gett my mounter and chifter¹³ to lovfe.

This wes the forme of the taking of Duneveg. We lay in ane buis¹⁴ about the hous, till the Captane and tuelf of his best men com out. We persewed ouer rathlie or they come far from the hous. The Captanes men fled, bot¹⁵ him felue and three or foure, they wer slane. We 3eid in at the vtter Barunkin with the rest, but they clofed the 3ett of the inner Barunkin. Or tuelf hours we took the vatter,

¹ Leave.

² This evidently alludes to a proposal for breaking ward; which, it may be conjectured, is the meaning of the Postscript. It is very probable that this and other of Sir James Makconeill's Letters had been intercepted.

³ On suspicion of aiding his escape out of confinement. ⁴ It is left to the reader to settle whether this word is used for 'interested' or 'increased.'—It seems to signify that none of them could hope for reward from him; so that bribery was out of the question.

⁵ The word is written so as to read *stane* or *starc*. The article intrusted may therefore have been some precious stone or jewel, or an order of merit.

⁶ Than. ⁷ If. ⁸ Sudden or powerful medicine. ⁹ Leaving; ceasing.

¹⁰ Loose; release from pledge. ¹¹ Watch. ¹² Annual-rent. ¹³ Probably his collar or chest. Old Fr. *chestron*. ¹⁴ Perhaps for *bush*, or thicket; or, more probably, it may be a slip of the pen for *ambush*.

¹⁵ Excepting; saving.

the vtter tour, and the tuo Barmkyns from thame, and sett fyre to the sett of the inner Barmkin, brunt it, killed and hurt some of there menne in with our thott; for we thott from four in the morning till efter tuelfue. Tuo of myne wes killed, a thouldiour and ane boy; tuo lightlie hurt. The hous wes promefed to yeeld or ten hours the morn. And so wes the Pryour and all that come out gatt thair lyff and there cloathes.

I trest in God that all the Campbells in Scotland, without HIS MA^{TIES} powar, shall not recouer it, so long as they live. I heare Patie Kilchrist is troubled for me; bot I protest to God he is innocent of my break, and all that is in that Castle. No more, but remember me to all frendes, specialie to Margrate, to Cristian, and all your owne frendes in the breathing; and also my homble seruice remembered, I rest

Your lo. owin to command,

July 3, Fra Duneveg.

S^R J. MAKDONALL.

To THE ERL OF CRAUFURD.

XII. LETTER, *Sir James Makconeill to Lord Tulliebardin.*¹

MY VERIE HONORABLE GUD LORD,

TREULY the tyme hes beine, when I wald never a luiked patt your father sone fuld persew me so hardly of my lyfe; for I protest I was never so hardly followid; and was so neir tane, patt your lo. self, and sum few with you, was within thre pair² to me. Bot I am much oblitt to your lo., for in faith ye maid me to be ane better fuitt-man, in one hour, nor I thocht to have beine in ane yer. Always,³ seing itt was HIS MA^{TIES} service your lo. did, I forgiwe you with my hartt; and I wish att God, my self had pe place to serve HIS MA^{TIES}, quhilk in my hartt I fall ever do. And this offence quhilk I have now committitt, I protest to God, is nott for desyre of troubles or Rebellion, nether for oney mistrust I had in HIS MA^{TIES} clemencé, or his honourable *Confull*, nor sett throw feir of aney thing patt can be tryed⁴ aganes me, anent patt erand of Dwnoveg; bot, as God knawis, my braiking Ward was only for pe saifté of my lyfe; for it is sertan, and I will gett veré honest wittnessis, to whom *the Laird of Calder* said itt, patt he had ane Warrant from HIS MA^{TIES}, quhilk *the Confull* never sawe, for to put me to present exsecutione, efter pe presenting of patt Warrant; so patt my lyffe was in *Calder's* will; and how lytill refone I had to trust to *Calder*, pairt of pe *Confull* self knawis; for, not only all vther vrangis he did me, he vrett both to HIS MA^{TIES}, and vthers att Court and in *Confull*, shawing, I was giltie both of pe talking and keeping of Dunoveg, pat pairby my lyfe micht be tane. Bott now, pat pe warld may se his mailish, whan I am, as I hop in God, out of his denger, I will say to your lo., as I fall answer to God, I am and was ever as inofent of pe talking or keeping of Dwnoveg. aganes his MA^{TIES} as your lo. is; and when all is tryid, I defy my onfreindis to try⁵ vtherwayis, be oney just tryell. And pairfoir, seing, efter such long miserie, and pe los of all my kyndly⁶ lands, I bott only fled with my awin lyfe, I hop pe *Confull* will evin pité me. And I befeik your lo. to be my freind, so far as ye may, without offence to HIS MA^{TIES}; only, in moving your freinds in *Confull* nott to be over hesté,⁷ att ye desyre of my onfreindis, to tak oney violent cursis aganes me, whairbé thay may gett preferment, and cairis nott what may follow, in expence to HIS MA^{TIES}, or truble in pe cuntre; quhilk fall nott be neidfull: For, give⁸ your lo. will gett me an assurance, pat HIS MA^{TIES} honourable *Confull* will heir pe same, I will give in such ane humble Peticione to pair lo^s in fullfilling HIS MA^{TIES} will, and pair lo^s in aney thing posebill to me; my lyfe and liberté being only reservid: And give HIS MA^{TIES} dispence with my lyfe, and offences, fall mak gud fuirté to truble no man, by⁹ ordour off law. So luing for your lo^s answer, be pe *Barron Rid's* meins, committing your lo. in God's protexion, I rest

Your lo^s affliured freind to command,

Junij 2.

S. J. MAKDONALL.

To my verie honourable gud lord, my lord ERLE OFF TULLIBAIRNE.

¹ William, second Earl of Tullibardine. See No. VI. Note.

² Three pair of butts; three butts' lengths.

³ Nevertheless; at all events.

⁴ Verified; proved; established.

⁵ Prove; establish.

⁶ The lands

which he held as 'kindly Tenant' to the King.

⁷ Precipitate; hasty.

⁸ If.

⁹ Contrary to.

XIII. EXTRACT OF A LETTER *from Sir Rorie Makcleud¹ to Lord Binning* (received June 30, 1615.)

Now, since I perfave *Sir James (Makoneill)* hes brocken warde, and come to Lochquhaber, and out of that come to Moror and Knoddort, where he took per force a young youth, the secund sone of *Glengarrie*² on a worfe,³ and keeps him still in custodie; and the Captanes sone, a son of Donald McAllan McEan, Captain of the Clan-Ronald. And thereafter, come to Sleat, to *Donald Gorme's* bounds,⁴ where he gott a bigg boat, with oares, faile, and taikleing; and intercomoned at lenth with *Donald Gorme* there; and a number of *Donald Gorme's* folkes of Sleat, called Clann Tarlich,⁵ is gone with him. And thereafter, passed till the Yle of Egga, where he mett *Coill*⁶ and his companyee, togidder with his bafe sone, and a sone of *Sir James Makforle* of the Route.⁷ And they ar in number, as I lerne, tuelfue or threttein th score, at the present tyme. And whidder they go South or North I can not tell, at the writteing heerof. It is my advyse to your lo. and Counfall, that your lo. derect a ample command and charge, till all and findrie the Superiours of the Yles, till convocat thame selues in armes, with a full Commiffion till⁸ everie one of ws, till perfew the said rebelles, by sea and land, with fyre and sword, in this form, in thrie severall armyes and companyees. That is, *Makelaine of Doward*⁹ and *Makeleane of Lochbui*¹⁰ in a companye and armie; *Donald Gorme* and *the Captane of Clann Ronald*¹¹ in a other armie; and I, *the Lairde of Coill*¹² and *Mackynnoun*¹³ and *my Lord of Kyntaile's*¹⁴ forces, in a other companyee; and lett euerie one of thir armies endeavoire thameselues in HIS MA^{TIES} seruice; and he that doeth best therein, have the greatest honour, and preferment, and reward of HIS MA^{TIE} and Counfall. And becaus the said *Sir James* and his companyee hes taken thameselues to the sea, in two barkes and findrie other boates, it were expedyent that your lo. and Counfell would fend me ane Commiffioun and powar to embark any ship I can apprehend, in thir Iles, to the better perfute of thame in thir Iles; otherwise, your lo. and Counfell till furnishe out two or three shippes, well provyded, to thir Iles; and derect one of thame to me, that I and they may concure togedder, in his highnes seruice. And I desyre the Iles Superiours to be devyded in three factions, for this caus. *Sir James* and the rebelles of the *Clanndonald* ar of kynn, blood, and alia¹⁵ to *Donald Gorme* and to *the Captane of Clann Ronald*; and *Sir James* and his rebelles ar deedlie enemies to *Mackelene* and his name, and they will never agree in a¹⁶ companyee and armee. And as for me, your lo. knowes verie well that I have given a proof of my obedience and seruice to HIS MA^{TIE} and Counfell allreddye, in taking, and apprehending, and delynering my own name and blood, the rebellis of the Lews;¹⁷ and in making these landis peaceable to HIS MA^{TIE}. Lett the rest do the lyk seruice now to HIS MA^{TIE}, and it is verie well knownen to HIS MA^{ESTIE} and Nobilitie of Scotland, that my hous neuer rebelled, nor yett shall rebell.

Your lo. humble seruitor at powar,

DUNVEGANE, 18th of June, 1615.

S^r RORIE MAKCLEUD.

XIV. LETTER, *Lord Tullibardine to Lord Binning.*

MY VERRIE HONOURABILL GOOD LORD,

I HAUE reffawit *McAllane McEan*, Capitane of the *Clan Ronald*, his ansuer of my Letter, quhair-

¹ Sir Roderick Makleod of that Ilk, and of Harris, called *Rorie More*, who married a daughter of Donald Mac-Angus MacAlister of Glengary.

² Donald MacDonell, afterwards of Scothouse; who married Mary, daughter of Sir James Macdonald of Sleat.

³ Unawares.

⁴ Of Sleat in Skye.

⁵ Clan Tarlich, that is, the

descendants of Charles.

⁶ Coill Makgillespik.

⁷ See Notice prefixed to this Trial.

⁸ To.

⁹ Hector

Maclean of Doward, called Eachin Oig.

¹⁰ Hector Owir Maclean. He married a daughter of Lauchlan

More, Maclean of Dowart.

¹¹ Donald MacAllan MacEan.

¹² Lauchlan Maclean of Coll; who married

a daughter of Sir Roderick Macleod of Harris.

¹³ Lauchlan MacKinnon of Strathordill, Laird of Mackinnon.

Strathordill is in Skye. He was knighted before his death.

¹⁴ Colin, second Lord Kintail, created Earl of

Seaforth, Dec. 23, 1623.

¹⁵ Alliance by marriage.

¹⁶ One.

¹⁷ Lewis.

by I perceave pat he is nocht previe to *Sir James* his brekking of Waird, and is refoluit nocht to mell¹ with pair courslis, ffor *Sir James* and *McRonald* did all pat pai culd, be mēlāges, to haue met with him, vpone pretence to haue delyuerit him his sone; bot he onnawwis wald haue ony midling with pame, nor wald nocht ressaue his sone, becaus he wes in thair cumpany, without ane Warrant of 3our lo^s of pe *Counsell*. Bot I heir pat senfyne, quhan *Sir James* taik pe sea, he fend him frome him. *Sir James*, at his passing out of Lochabber, wes onlie accompaneit with fourtene men and boyis, and *McRonald* followit him with sextene men and boyis. They past out pat to *McEan of Ardnamurchais*² cuntrie, quhair I heir pat *McEan* him selff, with all his cumpany with him; att pe leift, pair is an great pairte of pame. He gat sum boittis pair, and past pairfra, langis pe coift; bot he culd haue no landing, nather in *McAllane McEane* his cuntrie, *Mcclawd Hereis*,³ nor *Donald Gormis* cuntrie;⁴ ffor pai pat foreis on all pe sea-poirtis, to stop his landing; and I think pei had maid sum onfet on him, if pair boittis had not bene all sunk of befor, for feir of suppryng pame.

I heir he landit into pe Isles of Rowme and Eg, quhair *Coull McGillespie* did meit him with ane cumpany of hagbutteris, about pe number of sewin scoir of men. Thair forme of meiting, as I heir, wes this. *Sir James* and his cumpany stude in ane plaice be pame selffis, quhair pe wper with his cumpany went round about him, onis;⁵ and at pe nixt going about, salutit him with pair wolly of schoittis;⁶ and continowit sua schuitting and inviring⁷ of him, for pe spaice of half ane hour; and pair-efter com to him euerie man, particularlie,⁸ chapping handis.⁹ Wpone pe morne, pai conuenit all pe haill bestiall, horfe, and ky, to one plaice, quhilk pei thocht to haue slayne haill;¹⁰ bot, vpone better aduyfement, pei slew onlie ane number of ky, for meat, quhilk pei caryit immediatlie to pair boittis; and pairefter taik pe sea,¹¹ to pe number of Thre hunder men, of all. *Cold*¹² brocht him tua crearis,¹³ with sum wpir boittis pat *Sir James* him self gat in Ardmurche, and suppryfit in wpir pairtis. It is thocht pat pei haue tane pair woyage to Ilay; and if pe cuntrie be vpone pair gaird, as pai fuld, I think pai fall nocht proffit mekill. The occasioun of my mannis stay; it wes long befor he could get tryell¹⁴ quhair *McAllane McEan* wes; for he wes buffie, in gewing of ordour, pat *Sir James* fuld nocht land¹⁵ on any of his Isles; and absenring¹⁶ him selff, pat pei fuld nocht get him. I vnderstand he hes fend him Letteres to the *Counsell*, quhilk I think 3our lo. knawis of befor now. I will request 3our lo. to lat me vnderstand, quhat directioun is cumit zit frome HIS MATIE, concerning *Sir James Mcconeill*, and quhat conclusioun 3our lo^s of *Counsell* hes taiken pairanent. Sua, hawing na farder at pis present, committis 3our lo. to pe protectioun of God; and restis

3our lo. euir affiurit freind and seruant,

PERTHE, pe 24 of Junii, 1605.

TULLIBARDINE.

I VNDERSTAND *Glengarrie*¹⁷ is presentlie in Ed^r, and is trublit be *my Lord Lowatt*¹⁸ in some actionis betuix pame. I wald request 3our lo. to be his freind and to forder him lame onir; for I mynd to meit with him, in his by-cuming, and fall lay him rycht to any thing pat concernis HIS MATIE¹⁹ seruice, to my power. And becaus he is dealler betuix me and *McAllane McEane*, Capitane of the *Clan Ronnald*, pleas 3our lo. wret to me, quhat particular ze wald haue me to lay to thair chairge; and I fall do pe best.

The pretext pat *Sir James Mcconeill* and *McRonald* myndit to haue vfit, to haue perswadit *McAllane McEane* and *Glengarry* to haue taikin pair parte, is pis auld actioun pat *my Lord Lowat* hes

¹ Meddle; interfere; mingle. Fr. *meler*.
Ardnamurchan, a powerful branch of the Claudonald.

² Macdonald of Ardnamurchan, Chief of the CLAN IAN of

³ Sir Roderick MacLeod of that Ilk, commonly called *Rory More*. He married a daughter of Glengarrie's, and was the founder of the families of Talisker, Bernera, Muir-avenside, Hammer, Grisernish, &c.

⁴ See Note relative to *Donald Gorme*, (No. XXII.) III. 25. ⁵ Once.

⁶ Volley; feu de joie. ⁷ Encircling. ⁸ Separately; individually; one by one. ⁹ An impressive mode of

swearing feudal obedience, and to live and die in his service. ¹⁰ Entirely; wholly. ¹¹ Set sail. ¹² Coill

Makgillespie Macdonald. ¹³ A *crayar*, sort of large galley; or rather a bark or sort of sloop. Cray is used in

O. E. in a similar sense. ¹⁴ Advice; satisfactory intelligence. ¹⁵ Should not be suffered to effect a landing.

¹⁶ Obscuring, concealing. ¹⁷ Donald Macdonald of Glengarrie (*Donald MacAngus MacAlister*.) ¹⁸ Simon,

seventh Lord Lovat. See *History of the Frasers*, by John Anderson, Esq. W.S.; a work of great ability and research.

aganis pame, and þe taking of *McAllane McEanes* landis our his head be *Sir James Stewart*. In my opinnioun, 3our lo^s of *the Counfall* fuld do weill to delay þe discussing of þir debaittis for ane quihyle till þir wper materis of *Sir James* war fetlit.

XV. LETTER, *Sir James Makconeill to Lord Binning.*

MY VERIE HONOURABILL GUDE LORD,

PLEIS your lo. I wald haue writtin to your lo. long or now, had not I culd find no bearer, becaus nane of my awin dar go thair. Aluys,¹ I will euer think myself bund for the fauour your lo. schew me at my being last in *the Castell*,² whanne God knawis vtheris wes bent to wrong me be thair fals accusationis; whose feir, and the report they gave out that my lyfe was onlye in thair willis, was the onlye motione of the braik of ward; and no intentione nor desyre I had, or hes, to live as ane Rebelle or outlaw; whiche traid, the Lord knawes, I abhorre; bot that I wald glaidlie live at libertye with my lyfe faif. And now, my lord, I befeik your lo., for the fauour of God and my perpetuelle seruice, pitie me and be my freind, that his Maiestie may be graciouflye moved not to 3ield to my vnfreindis, to ruit me and my whole race out, being fyve or sex hundreth 3eiris possessoris, and now willing to obey and serue his Maiestie, in all humilitie, I, seing how I and my pure freindis may live; and if 3our lo. culd find the meanis that HIS MA^{TIE} and *Counfall* may be moved to let me posses this pure Iland, paying for it as anie vther may or hes 3it offerit to do, and getting my pardone, fall find sufficient suretie, both for my 3eirlie dewtye and the peace and quyetnes of me and all that dwellis vnder me. Gif 3our lo. may or will do me any guid in this, I will not onlie be ane to do 3our lo. guid seruice, bot, with Goddis grace, let 3our lo. sie my thankfulnes. befeik 3our lo., for Goddis cause, be playne with me, and if HIS MA^{TIE} may not be moved to let me haue this Iland, diminissing nothing of HIS MA^{TIES} commoditie, that 3our lo. will let me know, be 3our advise, be what vther meanis HIS MA^{TIE} may be moved to grant ane generall pardone to me and all myne; and that we may haue to susteine ws in sum meafour, leif we be forcit, being without oure living, to oppres vtheris. This abyding 3our lo. anfueir, committing 3ow to God, I rest

3our lo. euir to command,

Julij 1.

SIR J. MAKDONALL.

MY LORD, If HIS MAIESTIE be not willing that I fall be his heighnes tennent in Ila, for Goddis cause let HIS MA^{TIE} hauld it in his awin hand; for that is certane, I will die befor I sie a *Campbell* posses it. And HIS MA^{TIE} hauolding it in his awin hand, HIS MA^{TIE} may haue ane thoufand merkis mair be pat, nor *Calder* fuld pay; I making it quyt of me and my kin, whiche I will do vpoun suche reasonabill conditiones as I will schow 3our lo., if 3e may assure me that 3e may get HIS MA^{TIE} brocht to this poynt, and in the meintyme no employment³ be gevin aganis me, till 3our lo. sie how this may be brocht to pas. As for this *Houfe of Dunereg*, which I tuik in four and twenty houris from *Calderis* menne, your lo. getting me fauour of HIS MA^{TIE}, the houfe salbe to serue HIS MA^{TIE}, and neuer to be keipit aganis his hienes. And if HIS MA^{TIE} awin Gaird or *the Bischopes* had bein in the Houfe, befor God I wald neuer persew it; bot finding these in it, who crewellie opprest the pure cuntrie, wes the onlie suitteris of my lyfe and landis, I wald I culd do thame mair disgrace! Referring all to 3our lo. consideratione and anfueir, I rest

3our lo. euer to be commandit,

Julij 1.

S^R J. MAKDONALL.

TO MY LORD SECRETARE.

XVI. LETTER, *Sir James Makconeill to Mr James Knox.*

RIGHT WORSHIPFULL,

I HAVE, for some buffinesse, pairtly concerning your father, sent this bearer to Edinburgh; and geve

¹ At all events. ² Of Edinburgh. ³ This is taken from a copy. The sense appears to be, that, in the interim, no one should be employed against him by Commission, or Letters of fire and sword.

my lord be gone to England, I pray yow faill not, as yee respect his lo. well,¹ to send his Letter to him, with suretie that it may com to his handes; for I have wrotten to his lo. the thing that I hope shall come to his lo. honour and credite; and there is none leaueand vnder his Maiestie that I will do mor to, till do be, and do him all the honour and credite I can. Heir I will entreat yow, give² 5e be in Edr, and any of my Letters come to 5our hand, yee will delyver thame to fuche as I have wretten thame to. And so, reposeing in 5our good will, and assuering 5ow I am to ferve and honour 5our father and 5our selue, I rest

5our assured frend to command,

FROM ILA, 4 Julij.

S^r J. MAKDONALL.

(*Postscript.*) Sir,

ALBEIT it be too great paines, yet in hope I will, God willing, do 5ow yett more seruice, send ony of 5owr servandis with all the rest of my Letters to such as thay are derected to, and what answer bees gotten, geve it to the berar. I rest

5our assured frend,

S^r J. MAKDONALL.

TO MR JAMES KNOX, sone to my Lord Bis hope of the Illis and Raupho.

XVII. LETTER *from Archibald Campbell*³ to *Lord Binning*,⁴ ‘*auent his persute of Sir James Makoneill.*’

RIGHT HONORABELL,

As I writt to 5our lo. from the Wode of Meffen, SIR JAMES M^cCONEILL and M^cRANALD went by pat way; and, as I was informed, he had staid Wednisday night and Thurfsday in Murthlie. So I, heaving riddin Wednisday night and Thurfsday all day, I wachit at Murthlie all pat night, bot pay maid no stay pair: Bot M^cRanald sent a man of his for a 5oung boy of his awin pat he had in Murthlie, and convoyed him with him. On Wednisday, at night, they were in a pure man’s house in Strabrane; and on Thurfsday, at night, pay wer in the East end of Ranoch, quhair I might haue bene sex houris before pame, gif I had bene fartane of thair way. *The Erle of Atholl*⁵ was advertised by pe *Erle of Mar*,⁶ and he followed pame. And on Fryday, in the morning, com in sight of pame; bot my lordis men had run so far, and his spayis pat went before him so wnprovedent, pat *Sir Jeames* and his companie wer advertised be *Strowan* his wyf,⁷ quho is *M^cRanald* his dochter. They wer forfild to leive pair horffis and clothes, and teake pame to pe wodis. *The Erle of Atholl* apprehendit *Sir Jeames* his man, pat was with him in the Castell, and quho staid efter him in pe Castell pat morning he brake ward, and too men of *M^cRanaldis*; bot my lord tels me he dismist pame all. My lord, so far as I culd learne, *the Erle* was exceeding willing in this persute, bot pair was sum wronge done him, pat I beleive his lo. as 3it knows not of. Those pat I send to be before pame ar not as 3it returned, nor no word from pame. I hope in God 5our lo. fall heir pat pay haue mett; for pay can hardlie pas by pame. *The Erle of Atholl* assuris me pat pair cam a compane of men to meit *M^cRanald*. My lord, if pair wer bot too hunder men and ane honest commander on pe feildis, they wer not eabell to do any thing be land; nor culd pay haue tyme to mowe⁸ any to follow pame: Bot in treuth, if pay be per-mittit, they will no dout grow stronge. *Sir Jeames* man pat pe *Erle of Atholl* apprehendit, told, pat pay resoluit to burne *Cadell*⁹ his landis of Mukarne; and pat he thocht a grait many Illenderis ver on pair course.¹⁰ My lord, so schune as I heir from those I derectit eftir pame, and pat I kno quhat course

¹ Weal; advantage. ² If. ³ Son of Sir James, and brother of Sir John Campbell of Lawers. Afterwards Sir Archibald. ⁴ Sir Thomas Hamilton, afterwards Earl of Haddington, Secretary of State. ⁵ James, second Earl of Atholl, son and heir of John, sixth Lord Innermeath, who had obtained the Earldom, Mar. 6, 1595-6. He married Lady Mary Stewart, second daughter of John, fifth Earl of Atholl, by his stepmother, Lady Mary Ruthven, and died without issue, anno 1625.—*Wood’s Peerage*. ⁶ John, seventh Earl of Marr, who had been intrusted with the education of Prince Henry, and was, in Dec. 1615, appointed Lord High Treasurer of Scotland. He married Anne, 2d daughter of David, second Lord Drummond, and died Dec. 14, 1634, æt. 77. ⁷ Robert Robertson of Strowan married a daughter of Maedonald of Keppoch. ⁸ Induce; persuade; more. ⁹ John Campbell of Caddell or Calder. ¹⁰ Were his abettors and maintained his cause.

Sir Jeames teakis first in hand, or quhich way he teakis him to pe seie, I will, God willing, retorne ; not douting bot *my lord Thefaurer*¹ will haue some confideratioun of my peans,² as I fall be reddie at all occasions to adventur my self in HIS MA^{TIES} seruice ; I rest

FROM the FURD of LYON, jis Setterday
at xij houris of pat day.

3our lo. ewer to ferue 3ow,

AR. CAMPBELL.

I pray 3our lo. adverteife Cadell, pat he may send word to his men of Mackarney, to be war of pe rebels.

To pe right honorabell, and my speseall good lord,
MY LORD OF BINNING, Secreter, &c.

XVIII. LETTER, *Lord Binning to Archibald Campbell.*

LOVING FREIND,

I RESSAVED your Letters of the 15 of this moneth, from Dunoveg ; bot now newes in thame ; becaus, vpone the 12 day, I hard the substance of all that your Letter beares ; quhilk that same 12 day was writen to Court be my Lord Chancellour. I am glad that my Lord is maister of these strentis, and forie that all the principall men are escaped, except *Coll*, who hes gottin conditions ; bot I hope that my lordis diligence, wisdome, and gud luk, fall owertak thame, and red HIS MA^{TIE} and the cuntrie of thair cummer, for if it fould fall vtherwayes furth (as God forbid) yow know quhat constructions men wald mak of the great preparatioun maid be sea and land, at so great charges to HIS MA^{TIE}, without any effect, bot the wrak of the poore beggarlie tennentis of Ilay and Kintyre. For, since *Sir James* and his sone, with *M^cRannald* and his sone, and *Glengarries* sone, and *M^cSorle*,³ ar all escaped, and *Coll*⁴ pardoned, I know not quhat ringleaders these ar, whome ye wryt 5e ar to bring in. Allwayes, it is gud that thair forces ar scattered, without harme or danger ; yit, so long as the heades ar all to the fore,⁵ the Rebellioun will never be thought quenched. Quhairfor, I know my Lord will have such cair as agrieth with his honour and HIS MA^{TIES} expectatioun. I have no certantie of *the Thefaurer* deutes dyet, bot I hope he will be heir about Hallowmes, and will assuredlie performe his promeis, yours being observed, quhilk I hartelie wishe. So, remembring my loving commendatiounis to your brother *Collin*, and praying you to prevent your curious nighbouris in the adverteifments of my lordis proceedingis, quhilk I wishe may be prosperous, I rest

Your verie loving freind, at powar,

[BINNING.]⁶

XIX. LETTER *from Sir Dougal Campbell of Auchinbrek to the Chancellor* (received Aug. 4, 1615.)

HONORABLE GOOD LORD,

MY humble dewtie remembrit, please 3our lo. to wit, that I am heer in the Tarbet, attending vpone our enemies coming farder in the cuntrie. 3our lo. fall vnderstand, since my last wryting to 3our lo., *Sir James* the traitour hes latlie directit out ane *fyrre croce*⁷ from the head of Lockerrane, quhair he makes his residence for the tyme, to the Tarbart, vpone the pretence that all maner of man betuix the Mull of Kintyre and the Tarbart fould come and tak land of him. And to preveine this, that the cuntrie fould get no skaith, I have directit for to get more assistance of men throw Argyle and Lorne. 3our lo. fall know that I was not anfuert, according to my Commissioun. The monyest⁸ that came to me was ane hundreth men ; the number of the baill thrie hundreth men. Withing 3our lo. to tak ordour with the cuntries disobedience, for farder inconvenience ; quhilk I fear will come to more

¹ Sir Robert Carr, Earl of Somerset, held the office at this time.

looked for, to quicken his zeal.

³ A son of Sir James MacSorle of the Route, formerly mentioned, both in this Appendix and in the Introduction to this Trial.

⁶ From a copy, marked by Lord Binning himself.

⁸ Most ; greatest number.

² A gentle hint that remuneration was

⁴ Coll Macgillespie Macdonald.

⁵ In being ; existing.

⁷ See Notes to *Sir Walter Scott's* *Lady of the Lake*, &c.

ikaith, if they be not punischt for thair fault. I sall give vp in forow to your lo. the particular disobeyars. These Rebels ar in readines with fyve nichtis provisioun and lone. Quhair they ar to mak thair onfet I know not; bot they ar mor in number than I wret to your lo. in my last Letter. I dowl not bot your lo. remembers the dait of my Commisshion, quhilk approchis neir to the next day of August; quhairfor I thocht good to mak your lo. forsein of this, that your lo. may tak ane ordour farder with thir Rebels. So, not troubling your lo. with farder writ, committis your lo. to the protectioun of the Almighty God.

Your lo. to be commandit to my powar,

TARBART, 30 July, 1615.

AUCHINBRECK.

XX. LETTER, *Lord Binning to the Earl of Argyle, 5th Aug. 1615.*

MY MOST HONO^{LL} GOOD LORD,

THINKING my self assured that your lo. wald, according to your promeis, contenit in your Lettre of the 24 sent to me, begin your journey homeward ypone the next day, and end it, at fardest, within ten or tuell dayes; I certified the *Counsell* pairof, and be Letteris to *Auchinbrek* and vtheris officeris, wudowtedlie that your lo. wald keip that dyet; but now, wnderstanding your lo. cairlesnes of that weightie charge, quhilk ze have wnderstaine againis the *Tratoris*, who daylie growis in number, force, and presumptioun, becaus they find no resistance, far les persute aganis them, quhairby they have left sum forces in Ila, to keip Duneveg and Lochgorne; and *Makoneill* self and sex hundreth with him, having maid thanefelstis maisteris of Kintyre, ar so swelled in pryde, that they have sent the fyre-corse¹ throw the cuntrie, and wairned all the inhabitants betwix Tarbert and the Mull of Kintyre, to tak their land of the Traitor *Makoneill*. We heir of so much boldnes in the rebels and fear in the cuntrie people, as we expect daylie to heir of thair farder futing vpon your lo. cuntrie of Argyle; which your owne people does fearfullie apprehend. We ar assured of *Auchinbrekes* faithfulness to HIS MAJ^{TY}, and your lo. do exceidinglie distrust his gouernement, in respect of his owne feiklines, the disloyaltie of many of the Irische people, and boldnes and subtiltie of the Rebels, too able to keep advantage of him. Nather will I conceall, that your lo. name² is envied, your owne autoritie and wounted estimatioun infinitlie impaired, be your absence and neglect of your cuntrie; and releiff of your freindis, engadged and wraiked for your debitis: And now, if your lo. fall kythe³ cairles, or slouthfull and sluggish in this great charge, ze will increas the libertie of your ewil-willaris, who have boldlie spokin to your disadvantage and discredit, discourage HIS MAJ^{TES} good subiects, embolden the Rebels, and mak your task more difficile nor⁴ your lo. apprehends. My affection to my maisteris honour, and respect and good will to your lo. self, makis me to wryt more liberallie⁵ in this mater nor vtheris will, which I hope and request your lo. may tak in good pairt; earnestlie befeiking your lo., all empeschments removed, to come heir with all possible expeditioun and resolution, to go forword with wisdom and diligence. Your lo. will find that your fallowing your owne will, aganis my opinioun, in purchassing ane Commisshion in this service, to ane particular number of the Counsell, will do hinder to the buslines. Bot the next best must be done; nothing being able to remove all difficulties, but your lo. prefence and diligence; which I recommend to your lo., as ze affect your maisteris favour and your awne honour. So, luing for your lo. extreame diligence, to amend bypast sleuth and ouersights, I commit your lo. to the protectioun of God.

Your lo. verie affectionat to serve you,

EDB, the fyft of August (1615.)

[BINNING.]

XXI. EXTRACT from *Minutes of Privy Council, Jun. 20, 1615.*⁶

THE *Marques of Huntly*⁷ hes gotten a verie ample Commisshion for persute of the Rebelles, espe-

¹ The Fiery-cross so often described by Sir Walter Scott in *The Lady of the Lake*, &c.

² Clan Campbell.

³ Prove careless.

⁴ Than.

⁵ Freely.

⁶ From the *Dennyline MSS.* Adv. Library.

⁷ George, sixth Earl and first Marquis of Huntly, the same person who was concerned in the traitorous correspondence with Spain, the burning of Dunblair, and slaughter of the Earl of Moray, &c.

cialie of *Macronnald*¹ and his sone, who ar his owne tennentes; and the Counsaile hes wrotten vnto him to send his sone *the Erle of Enyee*,² with diligence, to Lochquhabar,—to persue the rebelles, to tak, demolishe, and destroy *Makronnaldes* houffes, to meddle with his whole goodes, and with the goodes of such as did reffett and supplie *Sir James Makdonald* and *Makronnald*, and not to come out of that countrie, whill he affaure the countrey to be keeped vnder his Maiesties obedience.

There is a Proclamation sett oute againes *Sir James Makdonald* and his sone, *Coill Macgillefpik*,³ and some otheres of the principall ringleadares in this rebellion; conteaneing a reward to any such persone or persones as will tak or slay onie of thame; to witt, for *Sir James McDonald* there is a promese of fyve thousand pundis; for *Makronnald* and his sone and *Coill Macgillefpik*, fyve thousand markes a peece; and for some others of the rebellis, thrie thousand markes. And there is a promese of pardon proclaimed to such of the rebelles thame selues, as will tak, and exhibite, or slay onie of there owene companie, being of a better rank and qualitie nor thame selues.

Sir James Makdonald and *Makronnald*, in there going towards the Isles, took a sone and a fer-vand of *the Larde of Glengarryes*,⁴ information whereof being made to *Young Glengarrye*,⁵ he, with such forces as he could mak vpon the suddane, followed thame to the sea fyd, and in a conflictt betweene thame, he hes taken two of the principallis of *Makronnaldes* companie, ffor whose releef *Makronnald* offerred delyuerie off *Glengarryes* sone; bot *Glengarrye* refused to delyuer his two prifoners, and hes promesed to exhibit thame heere within ten dayes.

*Donald Gorme*⁶ and *the Captane of Clannronnald*⁷ hes by there writtinges promesed to continew in there obedience, and to do the best of there endeuoures in the persute of the rebelles.

XXII. EXTRACT from ‘*The Historie of King James the Sext,*’ (published for the *Bannatyne Club*.⁸)

IN the moneth of Maij (1615), *Sir James Makoneill*, eldest sone to umquhile *Angus Makoneill of Dunnevaig*, who was before condemnit for certen crymis committed be him, and for escaping furth of the Castell of Edinburgh, in cumpanie of *Johne Lord Maxwell*, as is before tauld, escapit furth therof; becaus it was constantly supponit that he had gevin counsell, be word and writt, for the violent keeping of that Castell; and fearing the cryme sould have bene tryit aganis him, be witnes, he tuik therefore tyme and occasioun to eschew unpuneist. This Castell of Dunnevaig was ombeset be certen of the Kingis ships, be sea, that nane of the Kepers sould escape that way, nor be furneist with viuers be sea. And *the knyght of Caddell*, brother-in-law to the said *Sir James*, took in hand to ombeset the same be land; as he did; and wan the same. Sum of the preafoners he put to death ther; uthers he convoyit faillie to Edinburgh; and the greatest nomber escapit, be sea, and became Pirats. In the meane season, *the Erle of Argyle*, having maid long residence at Court, and understanding that *Sir James Makoneill* was destroyand his laudis and tennents, maid narrative thair of to the King; and obtenit ane ample Commiffioun of his Maiestie, to pas aganis him, with fyre and sworde, and to apprehend him, ather quick or deid, as he best could; and so, haisted himself towart Scotland, with all speed, for the purpose. His voyage maid no good successe, as falbe, God willing, declairit heirefter, at mair lenth.⁹

¹ Alexander McDonald or McDonald of Keppach or Gargavache. ² George Earl of Enzie, afterwards second Earl of Huntlie, who was beheaded at Edinburgh, Mar. 22, 1649.

³ Father of Alistair McDonald, Lieutenant to the great Marquis of Montrose in the civil wars. He was popularly styled *Coll Keitach*, i. e. Left-handed Coll, from which his son Alistair took his designation of McColl Keitach, abridged to *Colkillo*. ⁴ Donald MacAngus of Glengarrye.

⁵ Alexander or Alistair, father of the first Lord Macdonell of Arras. ⁶ Of Sleat, called *Sassenach*, having been educated in England. He married Mary, daughter of Hector MacLean of Dowart, leaving three sons. ⁷ *Donald More*, the eldest, married Margaret, sister to Colin Lord Kintail; and dying, without issue, in 1616, his nephew, *Donald Gorme Oig*, son of his brother Archibald, by Margaret, daughter of Angus Macdonald of Dunnevaig and Glynnis, succeeded. See (Archdall's) *Lodge's Irish Peerage*, VII. 115. ⁸ Donald McAllan McEan.

⁹ Edited by Thomas Thomson, Esquire, quarto, Edin. 1825, p. 388. ¹⁰ The author either did not live to fulfil this intention, or at least did not complete his History, which terminates abruptly, anno 1617.

XXIII. THE EARL OF ARGYLE'S REPORT TO THE PRIVY COUNCIL OF SCOTLAND of his *Comission of Lieutenantry*.¹

(1615, Sep.) IMMEDIATIE efter that the *Erle of Ergyle* had receavit his MAIESTEIS Commissioun of Lieutenandrie over THE ILLIS, he addresst him self, with all convenient diligence, in Duntroone,² quhair the greatest pairt of his forceis did meete him. And being fairlie informit, that the Traytour *Sir James McConeill*, and his complices, to the nowmer of seven or aucht hundreth men of weere, for that present in KINTYRE, and of full intentioun thair to remane, quhill³ thay wer by the gritter power forcit out of it, his lo. resoluit to mak ane onfett without ony delay, alswell on thair veschellis as on the *Rebellis* thame selfis; and thairfore commandit the *Laird of Caddell*, who had the conducting of the forceis of Lorne, to mak his onfet on thair veschellis, quhair he could heir thame to be, ather in YLE OF GIGA, the ILE OF CARA, or on the MAINE-LAND OF KINTYRE. Lykewyle so, his Lordship gaif command to the *Laird of Auchinbrek*,⁴ and to some speciall of *Auchinbrekis* freindis, to merch over land to the Tarbart, with his lordshipis forceis of Ergyle. My lord him self, being accompaneid with the men of Coule,⁵ went by Sea to the Tarbart, on the vther fyde of the Maine-land. My lord went from Duntroone on the day of September, and wes that nicht in the Tarbart; quhair *Auchinbrek*, with the men of Ergyle, did meete him that same nicht. *Coll McIlleppik* haiving⁶ *Coline Campbell of Kilberrie*, set out to him, come with fyftie men the foirfaid nicht to Loch Tarbert, quhair he apprehendit the said *Coline*, and some foure or fyve with him, quhome he maid his prisonairis. Airlie the nixt moirning, *Coll McIlleppik*, being on his way bak agane, towardis the Ile of Cara, quhair he had left *McRannald*, and his fones, and *Sorle McJames*, who wer appointit to remane in Cara, for keiping of the *Rebellis* veschellis; he being on his way, as said is, persaut *my Lord of Ergyle* his forces of Lorne, failling towardis Gigza; and some of thame, haueing gone in the bak fyd of Gigza, maid ane onfett on the *Rebellis* who wer in Cara, bot wer preventit⁷ by some of the *Laird of Largy*⁸ his servandis, who persaut *my lord of Ergyle* his forces going towardis Ergyle, quhair the *Rebellis* wer, and fet on grite beikynis⁹ to mak thame warr.¹⁰ The foirfaid Ila not being diftant frome land above twa or thrie myllis of sea, zit before the *Rebellis* could get away in thair boitis, thair wer some of *McRannald* his men apprehendit and slane. *Coll McIlleppik*, as said is, being on his way to the Ile of Cara, wes adverteist be a servand of the *Laird of Largyis*, that *my Lord of Ergyle* his forces had chasit *McRannald* and those that wer with him out of the Ile of Cara, and had plantit thame selfis thair; so he immediatlie was forcit to land in Kintyre. Some of the *Erll of Ergyle* his men, haueing forgadderit¹¹ with him in his landing, killit a fyftene or sixtene of his men, and took his foure veschellis frome him. My lord of Ergyle, the foirfaid day, fend his forces of Couell and Ergyle, within twelf myles to the place quhair *Sir James McConeill* and his complices wer; bot he being adverteist that *my Lord of Ergyle* his forceis wer comeing, by sea and land, vpoun him, fled away to the *Ile of Rachlie*,¹² quhair he remanit twa nichtis, and thairefter went to Ila. My Lord of Ergyle being adverteist thair of, and heiring that his Ma^{te}is schippis wer arryvit at the *Ile of Maeharunnik*, his Lordship went with his forces of Lorne and some of the men of Ergyle, who had thair veschellis on that fyde of the Meane-land, towardis his Maiesteis schippis; quhair he was stormestayd for the space of thrie dayis. And thairefter went to *Loddummes* in Ila, a harbour convenient for his Maiesteis schippis to abyd in, and good for landing of his lordshipis forces, out of the danger of

¹ Presented to the Privy Council by 'Archibald Campbell,' (Brother to the Laird of Lawers,) 'sernitour to Archibald Erle of Ergyle,' Nov. 23, 1615.

² Probably meant for *Dunoon*, of which the Duke of Argyll is still nominally the Heritable Keeper. The *Dun* on which the ancient Castle stood is all that remains to point out its site.

³ Until. ⁴ Sir Dugald Campbell. ⁵ Cowell, a district of Argyle. ⁶ Some words appear to be omitted here,

such as 'set for,' or 'laid in wait for.' ⁷ Frustrated. ⁸ Macdonald, ancestor of Sir Charles Macdonald Lockhart.

⁹ Large beacons. ¹⁰ To make them aware; put them on their guard. Such beacons were usually large fires placed on the tops of the highest mountains or eminences, and carefully fed with tarred wood, &c. until answered from adjacent heights.

¹¹ Met; encountered.

¹² Rachlin or Rachrin.

the enemy. Haueing stayed thair twa dayis, for refrescheing of his men, and till he sould heir quhair *the Rebellis* wer, immediatlie being adverteist that *Sir James*, with his complices, wer in *the Rindes of Ila*, and in a little Ile neir by, called *Illannourfay*, *my Lord* maid onfet on thame, by sea; quhairin his lordschipis men wer preventit by some, who set on beakynis in *the O of Ila*, quhairby *Sir James* was adverteist that my lord his forces wer comand on him, so as *Sir James*, *McRannald* and his fones, and *Sorle McJames* fled over that nicht to *Inchdachele*, ane Ile on the coast of Ireland. *Coll Mcillispik* haueing the keiping of the CASTELL OF DUNYVAIG and the ILE OF LOCHGORME, randerit thame bothe to *the Erll of Ergyle* and *Colin of Kilberrie*, quhome he had taikin captine; and apprehendit *Mciphie*,¹ on of the principallis who followit *Sir James*, and deliuerit him to *the Erll of Ergyle*; and I haue presentit him this day before your Lordschipis, with vther fyve of *Sir James* his complices. Efter that the Castell of Dunyvaig and force of Lochgorme wer taikin in, *my Lord* apprehendit fyftene of the principall men of Ila, who wer leadairis of the poore ones, to follow *Sir James*; whome he causit be execute thair. And haueing deliuerit the fairsaid Castell of Dunyvaig and the force of Lochgorme to *the Laird of Caddell*, his Lordschip come frome *Ila* in his Maiesteis schipis, and arryved in *Loch-ilecarrane*² on the sextene day of October last. His Lordschip no thooner come thair, than thair come on of the said *Sir James* his followaris who went with him to Ireland, and vndirtok to bring some of my lordis fervandis to the place quhair he left the said *Sir James*; and gif he were not to be found thair, he wes suire to find him in the toun of Galloway, in Ireland, in *Vallentyne Blak* his house, or *Robert Blak* his house, thair; two, who are alledgeit to be reffettairis of Jesuitis. *My Lord* being thus fuirle informit of the said *Sir James* his proceedingis, hes directit threttie of his men, in two onfettis, to Ireland, efter him. As to *Sorle McJames* and the twa and twenty that he had with him, thay ar in *the Route and Glenmes of Ireland*:³ It is alledgeit that the sub-officer thair hes gevin thame promeis of protection for two monethis. As to *McRannald* and *his fones*, thay ar fled to Loch-quhair; and my Lord his forces ar in persute of thame thair. As to *Glengarrrie* his sone, he is refat in his fatheris boundis, and my Lord hes some of his fervandis efter him. At my Lord his coming to Kintyre out of Ila, he apprehendit some of the principallis thair, who had followit *Sir James*, and those who maid wairning to the Rebellis of *the Erll of Ergyle* his forces coming to Cara. Lykwyfe his Lordschip dismissit *Capitane Wood*, *Capitane Monke*, with his Maiesteis Schipis, and the Bark quhairin his Maiesteis cannoun and munitioun wes, on the tent day of Nouember instant.

As alsua, the said *Archibald Campbell* gair in the ARTICLES following, quhaironto he craved the saidis Lordis aduise and ANSWER; off the quhilkis Articlis and Answeris the tennour followis.

ARTICLES and ANSWERIS.

FIRST, to inquire, gif your lordschipis thinkis it not ane sufficient exoneration to the Erll of Ergyle, that *Sorle McJames* is in Ireland, and hes tua monethes Respett,⁴ as is allegit?

ANSWER. *The Lordis thinkis that the Lieutenant hes done his dewtie, and sould be exonerat of Sorle McJames, gif he be in Ireland, as is alledgeit; seeing, his lordschipis Commissioun giris him nocht power to persew Sorle McJames, in Ireland.*

SECUNDLIE, to crave thair Lordschipis opinionis, gif thair Lordschipis thinkis it nocht sufficient, that gif *McRannald* his fones may nocht be apprehendit be *my Lord of Ergyle* his travellis, before my Lordis coming to the Commissionairis, that my Lord prove in quhais boundis thay haif had actuall residence?

ANSWER. *Gif McRannald and his fones can nocht be had afore the Lieutenments coming heir, gif the Lieutenant will verifie and prove quhair and by quhome they are restet, and within whos boundis thay haif thair actual residence, he dois his dewtie, in that point.*

THRIDLIE, to inquire thair Lordschipis, gif *Glengarrrie* will nocht be obleigt for *his sone*, it being cleirlye provin, that he has actuall residence within his fatheris boundis?

¹ Mcaphie of Colonsay. The modern name is McFee. Mac-Sorle-Boye, mentioned in the Notice to this Trial.

² Loch-Kilkerran.

⁴ Respite.

³ The property of Sir James

ANSUER. *Glengarrie wilbe haldin to anſuer for his ſone, it being prouin that he is reſſet and hes his actual reſidence within Glengarryis boundis.*

FOURTLIE, to ſchaw thair Lordſchipis, that *my Lord of Ergyle* findis the haill cuntrey people of KINTYRE, ILA, COLONSAY, JURA, and EIGA, guiltie in being in company, and beiring wapponis, and muſturing with *Sir James Mcconell*, at ſuche tymes as he appointit; and in geving of meite, drink, and harborie to him, his followaris; and for the moſt pairt thay neur left *Sir James*, nather in KINTYRE nor ILA, vntill he was conſtrayned to leive thame; yit *my Lord of Ergyle*, finding the nowmer ſo grite, and that thay alledgeit that it was throw juſt feir that thay went with him, or ſchew him ony fauour; thairfoir my Lord hes put to the knowledgement of ane Affyſe, ſuche as had commandiement of companyis with him, who might haue done ſeruice on *Sir James* and his followairis, and haue left thame at thair pleaſoure; and forbearis the reſt, vntill he know the Commiſſionaris pleaſoure; altho' the extremitie of the law wald tak all thair lyveis.

ANSUER. *The Lordis ar of the Lieutenentis opinioun, concerning this Article; bot thay will firſt acquent the KINGIS MAIESTIE thairwith, and haue his Maieſteis will and pleaſour thairanent, afore thay gif thair aduiſe to the Lieutenent.*

FYFTLIE, to ſchaw thair Lordſchipis, that the CASTELL OF DUNYVAIG and the ILE OF LOCHGORME, being randrit to *the Erll of Ergyle*, he hes delyuerit thame to *the Laird of Caddell*; and delyris THE COUNSALLIS allowance of the ſame.

ANSUER. *At the coming of the Lieutenent and of the Laird of Cadell heir, this Article ſall reſaue an anſuer.*

(SAXTLIE,) To ſchaw thair Lordſchipis, that he who hes vndirtaikin to bring my Lordis ſervandis to the place quhair *Sir James McConell* hes reſidence in Ireland, thew my Lord, gif *Sir James* wer out of that place, quhair he houpit to find him, he wald fuirlic be in the toun of Galloway, in Ireland, ludgeit ather in *Vallentyne Blakis* houſe, or in *Robert Blakis* houſe, for thay dwell in that toun—and hes a certane ſowme of money payit vnto thame, yeirlie, for reſſaueing of Jeſuitis; and *Sir James* had his moyen maid, that be thair meanis, he ſould be tranſportit out of the cuntrey.

ANSUER. *The Lordis will wryte to the Lord Deputie of Ireland, concerning this Article.*

Treason—Breaking the King's Ward—Treasonable Murder, &c.

[JOHN, ſeventh LORD MAXWELL, of the ancient and diſtinguiſhed family of Caerlaverock, and brother of the firſt Earl of Nithsdale, was a powerful but turbulent Border baron, and was one of thoſe individuals, whom a daring and reſtleſs temperament, and their crimes, have 'damned to eternal fame.' He appears to have fallen a victim to an unhappy indulgence in thoſe reckleſs and deadly feuds, which were alike the diſgrace and the curſe of the Scottiſh Nobles and gentry, for many centuries.

In order more clearly to comprehend the hiſtory and cauſes of his crimes, originating in diſappointed ambition, to which at length Lord Maxwell fell a ſacrifice, and account for the hereditary feud, which terminated in the perpetration of the diſgraceful Murder for which he was eventually brought to the ſcaffold, it ſeems neceſſary to premiſe, that his father, John, *ſixth* Lord Maxwell, Warden of the Weſt Marches of Scotland, &c., had the addreſs and fortune, ſhortly after the Execution of *the Regent Morton*, to obtain, as in right of his mother, *Lady Beatrix Douglas*, the Regent's ſecond daughter, a Charter to the Earldom of Morton, Jan. 5, 1581. This grant he had alſo intereſt enough to get publicly ratified by Parliament, Nov. 19 thereafter. Lord Maxwell, however, did not long enjoy the title of Earl of Morton, and the domains annexed to it;—for, in Jan. 1585, the Attainder

was solemnly rescinded by Parliament,¹ and the title and estates were declared to revert to Regent Morton's lawful heir. Sir Walter Scott informs us,² that *the Laird of Johnstone* (John) was employed to apprehend Lord Maxwell, who had been declared his Majesty's rebel, on account of his Religion, &c. in 1585; and was intrusted with two bands of hired soldiers for that purpose, who were destroyed by the Maxwells. Johnstone himself was subsequently defeated and made prisoner, and his house of Lochwood taken and set on fire, 'that Lady Johnstone might have light to put on her hood!' This Laird³ shortly afterwards died of grief, in April 1586;⁴—and to these circumstances we must unquestionably ascribe the origin of the deadly hate between the two Clans, and especially between their chiefs.

Maxwell, thus baffled in his aspiring hopes, was speedily imprisoned on account of his religious tenets, and for his share in the above-mentioned outrages. He was afterwards liberated, on condition of leaving the country; and being strenuously attached to the Religion of the Church of Rome, he shortly left Scotland, in the highest disgust. Having proceeded to Spain, he instantly offered his services to 'His Catholic Majesty,' who had, about that time, commenced active preparations for his threatened invasion of England and Scotland, which he arrogantly intended to overwhelm and subjugate, by means of his '*Invincible Armada*.' There, Lord Maxwell matured his plans; and after being furnished with pecuniary assistance, and having received full instructions from his new sovereign, he returned to Scotland, in 1588, and immediately commenced to levy men on the Borders,⁵ where his influence was still indisputable. News of his Plot having reached Edinburgh, the most active preparations were made, and he was quickly surprised by the King in person, at Dumfries, made prisoner, and his Wardenship of the West Marches bestowed on his rival, *the Laird of Johnstone*, the son of the last Chief of that name, one of the most powerful of the lesser Barons on the Borders, and ancestor of the Noble family of Annandale.

SIR JAMES JOHNSTONE of that Ilk, the new Warden, besides being thus distinguished by the Royal favour, in being intrusted with so honourable and important an Office, was afterwards Knighted at the Queen's Coronation, in 1590. However, owing to some political reasons, and principally, the King's desire to conciliate his Roman Catholic subjects, by the display of a few popular acts of clemency, the Wardenship was restored to Lord Maxwell, on his submitting to certain reasonable conditions. The frequent transference of so envied a dignity, and that, too, upon powerful rival Chieftains, was unquestionably providing fuel to feed the fire of ancient jealousy, and more recent deadly feud, which had been rankling in the breasts of both parties, and only required the intervention of some such occurrence to be fanned into the fiercest flames.

Besides the occasional skirmishes with the Maxwells, it appears that the Johnstones, as well as Lord Maxwell, had given assistance to the Earl of Bothwell, in his numerous daring attempts in 1592, &c. It is probable that, on this account, Sir James had been warded in the Castle of Edinburgh, either for his own personal conduct, or as responsible for his Clan, and for failing to give security, &c. Nevertheless, it is certain, that (from whatever cause he was confined) he contrived to make his escape from the Castle, Jan. 4, 1693.⁶ Through powerful mediation, the rival Chiefs were induced to enter into mutual alliance, and bound themselves to support each other in all their lawful quarrels. On the faith of this, the Clan of Johnstone concluded they had little to apprehend from the *justice* of the new Warden, provided they did not plunder any of the name of Maxwell. They accordingly made a descent upon Nithsdale, where they committed sundry depredations on the Lord Sanquhar, the Lairds of Drumlanrig, Closeburn, and Lagg, and killed eighteen persons, who had 'followed their own goods.' Counting upon the hereditary enmity subsisting between the two names, a Commission was given to Lord Maxwell, who was instructed to pursue the Johnstones with all hostilities. Being

¹ *Acta Parl.* ² *Tales of a Grandfather*, 2d Series, I. 93.
appointed Warden of the West Marches and Justice in 1570.

³ John Johnstone of that Ilk. He was
⁴ *Wood's Peerage*, I. 73. ⁵ *Robertson's*
Hist. 11. 357. *Redpath's Border Hist.* 672. *Moyse's Memoirs.*
⁶ See this Collection of Trials, I. 359.

informed of this, Johnstone obtained assistance from Annandale, and was joined by the Scots of Teviotdale, the Grahames and Elliots of Eskdale; and besides, according to the Records of the Privy Council,¹ ‘diners Englishmen, tressounable brocht within this realme, armed in plane hostilitie,’ &c. On the other hand, Maxwell, contrary to Law, entered into ‘Bonds of Manrent’ with the Lord Sanquhar, Drumlanrig, and others who had been pillaged by the Johnstones, wherein they bound themselves to maintain each other’s quarrels; so that each party thus possessed a large force.

MAXWELL, in his capacity of Warden, and also as holding the King’s special Commission, summoned the Laird of Johnstone to surrender; which he refused, on the ground of the illegal bonds into which Maxwell had entered. The Warden, therefore, without further parley, sent forward Captain Oliphant with some troops, to Lochmaben, to await his arrival in Annandale; but the Johnstones, marching suddenly upon them, killed the Captain and a number of his soldiers, and set fire to the Parish Kirk of Lochmaben, whither a number had fled for shelter, but were thus forced to surrender. In revenge, Lord Maxwell, intending to raise the inhabitants of the different towns in his aid, as his Majesty’s Lieutenant, entered Annandale; but Johnstone, having obtained early information of his motions, suddenly attacked him, and overthrew his forces, and slew Lord Maxwell ‘and sindrie Gentilmen of his name.’² This fatal affair took place, Dec. 7, 1593, and is well known by the name of THE BATTLE OF DRYFFE SANDS, having been fought close by the river of that name, near Lochmaben. Archbishop Spotswood remarks, ‘The Lord Maxwell, a tall man and heavy in armor, was in the chafe overtaken and stricken from his horse. The report went, that he called to Johnstoun, and desired to be taken,³ as he had sometime⁴ taken his father; but was unmercifully used; and the hand that he reached forth cut off; but of this I can affirm nothing. There always⁵ the Lord Maxwell fell, having received many wounds. He was a Nobleman of great spirit, humane, courteous, and more learned than noble-men commonly are; but aspiring and ambitious of rule.’⁶

The issue of the Conflict of DRYFFE SANDS, or battle, as it may almost be termed, (for Maxwell had above two thousand men on his side, and it is stated that Johnstone had not quite so many,) was evidently accomplished by manœuvre. Johnstone sent ‘forth some prickers to ride and make provocation,’ after the Border fashion, which succeeded in drawing out a number of the other side, ‘who, encountering with a great company, were beaten and chafed back to the stall or main host; which, by their breaking in, was wholly disordered. Johnstoun, that stood on a piece of high ground, beholding the issue of the skirmish, took the advantage of their confusion, and breaking upon them, without any resistance made, put them all to flight.’⁷ The Maxwells suffered very severely, and in their retreat great numbers perished. They were pursued through the streets of Lockerby, where they were cut down in scores. Those who escaped bore on them, to their dying hour, marks of this fatal day, which occasioned the proverbial phrase of ‘a Lockerby lick,’ to denote a frightful gash over the face or skull. So dreadful was the carnage in this disastrous Conflict, that not fewer than *Seven Hundred* of the Maxwells and their adherents were slain! The routed enemy were pursued as far as the Gotterby-ford of the *Annan*, where many were drowned.⁸ It is worthy of remark that there still exist, in the Holm of Dryfe, about half a mile below the old Church-yard of Drysdale,⁹ two very aged Thorn-trees, with a tumulus at their base, called *Maxwell’s Thorns*, evidently in commemoration of the fight, and probably marking the place where he fell.

It is evident, then, according to the sentiments of those times, imbibed from their earliest years, which

¹ See *Trials*, I. 305. ² *Ibid.* and I. 360. *Marj. Annals*, p. 57. *Balf. Ann.* I. 394. ³ *Birrell’s Diary*, p. 19.

⁴ Viz. called or begged for quarter. ⁵ Formerly or previously granted quarter to Johnstone’s father, by taking him prisoner, instead of putting him to death. ⁶ At all events; nevertheless. ⁷ *Spots. Hist.* 407.

⁸ Whatever opinion may be entertained of the treasonable conduct of Johnstone, in thus openly resisting the King’s Lieutenant, merely because he happened to be his personal enemy, it is impossible to withhold admiration at the masterly manner in which this skirmish was conducted, which showed military talents of a very high order. ⁹ *Statistical Account*, IX. 424. ¹⁰ Q. d. *Dryfe’s-dale*.

‘grew with their growth, and strengthened with their strength,’ that natural duty and filial piety required such a feud should become hereditary, and behoved to be handed down from one generation to another! The attempts by the King and his Council to procure an effectual reconciliation, although strenuously made and often repeated, at length proved abortive. The re-appointment of the Laird of Johnstone to be Warden of the West Marches, in 1596,¹ appears to have served as a signal for the resumption of immediate mutual aggressions. Birrel records ‘an feicht or combat betuix the Laird of Drumlanrick and the Laird of Johnestoun and thair afflisteris,’ Jul. 13, 1597;²—that, on May 27, 1598, ‘the Laird of Johnestoun his pictor (was) hung at the Croffe (of Edinburgh) with his heid downwart, and declarit ane manfworne man; and upone the 5 of Junij, he and hes complices wer put to the horne and pronuncit rebellis at the Croffe, be opin Proclamation.’³ This gossiping Chronicler farther informs us, that, on Jul. 2, 1600, he was ‘reflorit to hes honours, at the Croffe of Edr, be the Proclamatione of a Herald and four trumpettis.’ It is likely that Sir James Johnstone did not long retain the Wardenship at this time; for, as may be seen in a former part of this Collection,⁴ Thomas Armstrong, ‘son to Sandies Ringane,’ was condemned to be hung in chains, &c. for the Murder of Sir John Carmichael of that Ilk, Warden of the West Marches, in the month of June, 1600. How long Sir John had filled that office has not yet fallen within the Editor’s observation. From the above announcement by Birrel, that Johnstone had been ‘reflorit to his honours,’ it may be inferred that he succeeded Sir John Carmichael, and once more held the ill-fated dignity of Warden of the West Marches.

The principal parties, as well as their dependents and kinsmen, lived at such mortal and bloody feud, and the peace of the country was so much disturbed, that mutual friends, for their own personal safety and comfort, suggested the expedient of an amicable and private meeting between Lord Maxwell and Sir James, for finally arranging all their differences. At length, they were prevailed upon, under solemn pledges, to meet at a particular spot, each having one attendant, on Apr. 6, 1608, when the principals, with Sir Robert Maxwell of Orchardton, (Sir James’s brother-in-law,) as a mutual friend, having removed to some distance, to converse apart, a quarrel arose between the two attendants. Sir James, having turned about to separate them, or to admonish them to keep the peace, Lord Maxwell suddenly and traitorously drew his pistol, fired at him, and shot him through the back with two bullets. There is some reason to suspect that this rencontre between the attendants had been plotted by Lord Maxwell, and arranged before the parties came upon the ground. From the evidence adduced, it is evident that no provocation was given, but that Maxwell, without any previous intimation, drew his pistol, and instantly shot Johnstone dead.⁵

The perpetration of *treasonable Murder*, as ‘Slaughter under trust’ was then termed, was one which, in any circumstances, but especially in such a country as Scotland, at the beginning of the seventeenth century, could not be pardoned. Accordingly, notwithstanding Lord Maxwell’s great connexions, (having married Lady Margaret, only daughter of John, first Marquis of Hamilton, and being related to many of the principal nobility of the kingdom,) the strictest search was made, and Lord Maxwell was at length committed to ward, in the Castle of Edinburgh.

His admirably contrived, and boldly executed, escape from this fortress, is fully detailed in the Appendix to this Trial. He was denounced rebel for breaking his Majesty’s ward and failing to underlie the law for the treasonable Murder of Sir James Johnstone. After this, his lordship took refuge abroad, where he remained till 1612, when he returned to Scotland; but so hardly was he pressed, in the Borders, that he had instantly to prepare for embarkation to Sweden. His kinsman, *George, fifth Earl of Caithness*, dissuaded him from this project; and easily prevailed on him to accept of his pro-

¹ *Rymer’s Fœdera*, XVI. 60 D.

² *Birrell’s Diary*, 41.

³ *Ib.* 46.

⁴ Vol. II. 363, Nov. 1, 1601.

⁵ *Ib.* 49.

⁶ For a number of extremely interesting and minute particulars, the reader is referred to *Tales of a Grandfather*, Second Series, which the Editor had not had the advantage of perusing, until this Notice was written. The difficulty of procuring minute and authentic information on such points of history is best known to those who have made the attempt; and even after the most laborious research, the most anxious enquiries often prove fruitless.

tection. He lured him to Castle Sinclair, under the pretence of affording him shelter and secrecy until he could conveniently prepare for his voyage. The real motive of this treacherous Noble, however, was, that he might obtain favour at Court,¹ by delivering up so great an offender.

The Countess of Caithness, (*Lady Jean Gordon*, only daughter of George, fifth Earl of Huntley,) who was Lord Maxwell's cousin, and greatly interested in his safety, was likewise deceived by her husband, who had told her that a report was spread abroad that it was already known at Court that Lord Maxwell was in hiding in Caithness; and that it was necessary, for their mutual safety, to set off for Edinburgh, to explain the matter; and thus, time would be afforded for Lord Maxwell's escape. The unfortunate Maxwell, then in poor health from his great exertions, was trained to leave Caithness, and pass through *Sutherland*, in order that he might be taken there; and thus spare the Earl the imputation of having so basely violated the laws of hospitality! But so anxious were his servants to execute their commission, that Maxwell was actually taken within the county of Caithness, conducted to Thurso, where Captain George Sinclair² was impatiently awaiting his arrival, and carried him back a prisoner to Castle Sinclair, where he had so lately been apparently a favoured and honoured guest.

By command of the *Lords of Privy Council*, Lord Maxwell was shortly afterwards delivered up; and was, upon May 21, 1613, beheaded at the Cross of Edinburgh. It may be gratifying to know that the Earl of Caithness obtained no reward for his most traitorous conduct;—but, on the contrary, his treachery served as a source of constant reproach to him and his family.

A variety of interesting DOCUMENTS are appended, which throw great light upon this matter, and upon the extraordinary state of the country at that period. If the Editor has been too minute or prolix, it is hoped that the singular interest and importance of this remarkable passage of History will prove his best excuse; especially, when it is considered that the previous materials were so very meagre and unsatisfactory.]

[*APUD EDINBURGH, Jun. 24, 1609, per Georgium Comitem Mariscalli, Virtute Commissionis, de data apud Grenwiche, Jun. 6, 1609, et per omnes Regni status; vnacum Jacobo Stewart pro Mariscallo, Willelmo Hay pro Constabulario, M. Roberto Lermonth pro Vicecomite de Ed', et Dauide Lyndefay, Adiudicatore.*]

Jun. 24.—JOHNE LORD MAXWALL.

Sir Thomas Hammyltoun of Bynnie, knycht, aduocat to our fouerane lord, producit, lykas he did diuerse tymes ofbefoir, ane fummondis of Treassoun, rasit and persewit be oure fouerane lord and be his hienes Aduocat, aganis John Lord Maxwell, to haue anfuert to the pointis of the said fummondis and to the crymes of Treassoun and lese-majestie contenit thairintill, the quhilk fummondis, and reaffones and causses thairin contenit, being first red in presens of the Lordis of Articlis of this present Parliament, they fand the samyn fummondis relevant: And thaireftir, this instant day, the samyn fummondis of Treassoun being red in

¹ In June, 1612, the Earl got in bad odour at Court by creating a broil on the High Street of Edinburgh, where he assaulted George Lord Gordon; and great slaughter might have been committed, but for the extreme darkness of the night, owing to which the parties could hardly distinguish their own friends.

² This person was bastard nephew to the Earl, and afterwards raised 150 men, and joined the unhappy expedition of Colonel Ramsay and Captain Hay, who had volunteered to assist the King of Sweden, in his war against the King of Denmark. 'They were all miserablie cut in peeces by the bours,' in their journey thither through Norway.—*Gordon's Hist. of Sutherland*, p. 289.

prefens of the said lord Commiffionar and of the haill eftaittis of this present Parliament, the said Lord Maxwell, being thyrfe callit at the tolbuthe windo, to haue anfuert to the said funmondis of Treaffoun; and compeirit nocht, the saidis haill Eftaittis fand the saidis funmondis, rafit be oure said fouerane lord and his hienes Aduocatt, aganis the said Lord Maxwell, and the haill thrie reffones and cauffes thairin contenit, and euerie ane of thame relevant: And thairfoir admittit the famyn to the said aduocattis probatioun. And immediatlie thaireftir, the said Aduocat, for preving of the pointis of the said funmondis of Treaffoun and haill reffones and cauffes contenit thairin, Repetit all the Depofitionis of the Witneffes, examinat befor the lordis of Articlis, and lordis of Secreitt Counsaill, ofbefoir, ffor preving of the saidis haill thrie reffones and euerie ane of thame; togidder with diuerfe Actis of Parliament, lawes and constitutionis of this realme, Sir James M'Coneillis Convictioun¹ for braking of waird furth of the Caftell of Edinburgh; Lettre of Horning aganis the said Lord Maxwell, for nocht compeirance befor the Lordis of Secrete Counsaill, to anfuert befor thame, for his breking of waird furth of the Caftell of Edinburcht, for the Burning maid be him at Dalfeble, and for Slauchter of the LAIRD OF JOHNSTOUN; with diuerfe vtheris wryttis and probatiounes producit be the said lord Aduocatt, for preving of the foirfaid funmondis of Treaffoun, and haill thrie feuerall reffones and cauffes contenit thairin, and euerie ane of thame; and renuncit forder probatioun: And thairvpoun the said Aduocat askit Instrumentis. AND lykwayes, the said Aduocat producit, in prefens of the said lord Commiffionar and haill eftaittis, Lettres of Relaxatioun, beirand the said Johne Lord Maxwell to be relaxit, be James Dowglas, meffinger, fra the proces of all Horningis, at the marcatt croces of Lochmaben, and Dumfreife, vpoun the xv day of March 1609 yearis, and at the marcat croce of Edinbur^t, be Johne Moncur, meffinger, vpoun the xxiii day of Marche, the yeir of God abonewrittin: As at mair lenth is contenit in the saidis lettres of Relaxatioun, fubferyuit be James Primrofe, clerk to the Secrete Counsaill, of the date the fext day of Marche laftbipaft, and regiftrat in the clerk of Registeris buikis, the xxiiij day of Marche, 1609 yeiris: And vpoun the production of the saidis Lettres of Relaxatioun, the said Aduocat lykwayes askit Instrumentis, and defyrit the said procefs of Foirfaltour to be advyfit be the saidis haill Eftaittis.²

SUMMONS OF *TREASON and FORFEITURE*, &c. *againft John Lord Maxwell.*

JACOBUS, Dei Gratia, Magne Britannie Francie et Hibernie Rex, fideique defenfor; dilectis nostris Leoni Regi armorum, Ilay, Albanie, Rofs, Rothefay, Snawdown, Merchemont, heraudis; David Bryfoun, Alexandro Dowglas, Jacobo Chahneris et M. Willelmo Stewart, clavigeris; Ormont, Bute, Vnicorne, Carrik,

¹ See May 13, 1609, in the preceding Trial, Vol. III, 1, &c.

² See *Acta Parl.* 1609, 414.

signiferis, nuntiis, et eorum cuilibet, coniunctim et diuifim, vicecomitibus noſtris in hac parte ſpecialiter conſtitutis, Salutem. Mandamus vobis et precipimus, Quod ſummoneatis legitime et peremptorie, coram teſtibus, JOANNEM DOMINUM MAXWELL perſonaliter, ſi eius perſonalem preſentiam commode habere poteritis ; ſin minus, per publicam proclamationem apud Cruces forales burgorum noſtrorum de Edinbur^t et Drumfreis, et apud Arces de Carlaverok et Drumfreis, et domicilia dicti Joannis Dominum Maxwell, ante ſuam a legibus fugam et rebellionem ; necnon apud portum vulgo *lie ſehore and peire of Leith*, aliaque loca neceſſaria, ſuper premonitione ſexaginta dierum, quia extra regnum noſtrum Scotie eſſe exiſtimatur ; quod compareat coram nobis noſtroue Commiſſionario et Juſticiario ac regni noſtri Scotie ordinibus, in Parlamento noſtro apud Edinburgh, vel vbi nos dictumve noſtrum Commiſſionarium et Juſticiarium, ac dicti regni noſtri ſtatus pro tempore conuenire contigerit, tenendo duodecimno die menſis Aprilis proxime futuri, hora cauſarum, cum continuatione dierum, ad reſpondendum nobis noſtrove Commiſſionario et Juſticiario, in prefato Parlamento ; necnon ad inſtantiam dilecti et fidelis conſiliarii noſtri Thome Hamnyltoun de Bynn timeris Aduocati noſtri, pro noſtro intereſſe, pro ipſius Joannis nefarijs, ſcleratis, et proditorijs Leſe Maieſtatis criminibus inſcriptis, per ipſum et alios eius mandato, perſuaſione, conſilio, auxilio, et ratihabitione perpetratis et commiſſis ; ac quarum conſcius, particeps, ars et pars fuit et eſt : Necnon dictus Joannes Dominus Maxwell ad videndum et audiendum per nos noſtrumve Commiſſionarium et Juſticiarium, ac dicti regni noſtri Scotie ordines, decerni ſe crimina Leſe Maieſtatis inſcripta modo ſubſequenti commiſſiſſe, penasque illas conſtitutas, vitæ, ſcilicet, terrarum, et bonorum omnium, mobilium et immobilium, dignitatum, officiorum, iurium, aliorumque omnium, infra dictum regnum noſtrum ad ſe pertinentium, vel que vſlo modo ad illum ſpectare vel pertinere poterunt, amiſſionem incurriſſe ; ac dicta omnia bona, predia, terras, teneamenta, officia, dignitates, jura, et commoda quecunque, illi infra dictum regnum noſtrum competentia, vel que ad illum vſlo modo ſpectare poterunt, nobis Foriſfecerit ; eaque ad nos pertinere et nobiſcum in perpetuum remanere, juxta leges et Regni noſtri conſuetudinem ; ob cauſas et rationes ſubſequentes. IMPRIMIS, quod non ſolum chariſſimi quondam avi noſtri Jacobi V. Regis illuſtriſſimi conſtitutione, in Parlamento ſuo, anno 1528 promulgata, ſed etiam lege per nos in Parlamento noſtro anno 1567 lata, cautum eſt, quod quecunque homines infra domicilia ſua comburunt, omneſque incendiarii edificiiorum et frumentorum, omneſque alii voluntarii et maligni incendiarii, dictum crimen certo propoſito et deliberato conſilio committentes, Leſe Maieſtatis rei erunt. Ac certum eſt, quod dictus Joannes Dominus Maxwell, ab ipſa iuventute ad contumaciam, rebellionem, legum et authoritatis noſtre contemptum, tum natura et prava conſuetudine deditus,

quum plurimis literis nostris, in annis 1598, 1599, 1600, 1601, et 1602, sub pena rebellionis ei imperatum fuisset, vt redditus prediorum suorum de Duncow, Trive, Grange, et molendini eiusdem, que pars domini corone nostre vnite et annexate sunt, et per dictum Joannem Dominum Maxwell et predecessores suos tanquam emphiteutas feudifirmarios et tenentes nostros possesse fuerunt, perfolueret : Necnon vt rationes nobis de aliis redditibus et taxationibus infra senescallatus nostros Vallis Annandie et Kireudbricht, predictis annis, multisque alijs precedentibus, nobis debitis, tanquam dictarum provinciarum et limitum Senescallus, vt ei ex officio incumberebat, nobis et nostris Scaccarii auditoribus redderet ; et dictos redditus, deuorias taxationes, aliasque pecuniarum summas, vbi debuerat, sub pena rebellionis perfolueret : Ac etiam, vt coram Consilij nostri dominis, per se, in dictis annis compareret, ad respondendum pro variis suis contemptibus, rebellionibus, carcerum nostrorum effractionibus, et violentis extra custodias nostras eruptionibus, aliisque delictis et maleficijs per ipsum commissis et perpetratis : ILLE tamen, omnia nostra imperia et mandata pertinaciter contemnens, easque ob causas multasque alias rebelliones ad cornu nostrum existens, quo tamen omnem venie sibi a nobis spem prescinderet, et flagiciosissimis criminibus extremas legum penas mereretur, . . . die mensis Februarij, aut eocirca, anno 1602, comitatus Carolo Maxwell vocato de Kirkhous, Roberto Maxwell de Dunwiddie, et aliis suis satellitibus et criminum socijs, ad numerum viginti hominum illegitime convocatorum, galeis, lanceis, loricis, bombardis, sclopis, alijsque armis prohibitis munitorum, pro inveterato odio et malicia, diu ante per dictum Joannem contra quondam *Gulielmum Johnestoun* fratrem Wilkini Johnestoun de Elcheschellis, et *Joannem Johnestoun* fratrem Jacobi Johnestoun de Hifliebray, concepta, ob capitales inimicitias inter MAXWELLIOS et JOHNESTONES, accessit ad villam de Dalfibbill, infra parochiam de Kirkmichaell et vicecomitatum nostrum de Drumfreis jacen. ; ibique, per seipsum, dictosque Carolum Maxwell vocat. de Kirkhoufe, Robertum Maxwell de Dunwiddie, aliosque seruos et socios suos, dictum Willelmum Johnestoun, in dicta villa de Dalfibbill quiete et pacifice degentem, nullasque iniurias, insidias, aut invasionem suspicantem, immaniter et maliciose aggressus, eundem infra habitationis sue domum in dicta villa de Dalfibbill fugauit ; vt omnis salutis spes ei auferretur, dicti Willelmi domum, certo proposito et per industriam, proditorie incendit et flammis vastauit ; cumque ignis violentia dictum Willelmum erumpere coegisset, crudeliter eum interfecit : Ac statim ad domum *Cuthberti Brattene*, in eadem villa existentem, accedens, eam pariter maliciose, crudeliter, consulto et deliberato animo, proditorie incendit ; ac dictum quondam *Jacobum Johnestoun* vocat. de Briggis infra eandem rivum combussit ; domumque dicti Cuthberti incendio penitus consumpsit. Eaque proditoria crimiua ipsius Joannis Domini Maxwell consilio, mandato, auxilio, et rati-

habitione, perpetrata sunt ; dictusque Joannes Dominus Maxwell eorum ars et pars, vulgo *airt and pairt*, fuit et est, et dictas penas Proditionis et Lese Maieſtatis iisdem criminibus, de jure constitutas, subire et perferre debet. SECUNDO, quia per nos et dicti regni nostri Scotie ordines in Parlamento nostro vndecimo statutum est, quod Homicidium alicuius subditi nostri, quando is qui trucidatur existit sub fide, fiducia, assècuratione, et potestate occidentis, vulgo *vnder the trust, credit, assurance, and power of the slayer*, omne tale Murthurum et Homicidium imposterum committendum, Lese Maieſtatis crimen erit ; et qui illius criminis legitimo juris ordine convictus fuerit, vitam, terras, et bona omnia nobis forisfaciet : Atque verum est, quod dictus Joannes Dominus Maxwell, vndecimo die mensis Junii, aut eocirca, anno 1605, coram Dominis Secreti nostri Consilij, in gratiam et amicitiam cum quondam DOMINO JACOBO JOHNSTOUN de *Dunskellie* milite rediit, ac omnium preteritarum inimiciarum oblivionem sancte promittens, in signum sincere reconciliationis et future amicitie fidem, et dextram ei dedit, et ab omni iniuria, damno, invasione, et periculo, a se, parentibus, affinibus, amicis, clientibus, servis, alijsque omnibus assistentibus suis, imposterum inferendo, se dictum quondam D. Jacobum saluum et incolumem prestiturum, magno interposito sacramento, promisit ; et Reconciliationis literas, vulgo *ane Letter of Slaynes*, manu sua signatas, ad premissorum testimonium et confirmationem dedit : Quarum fiducia illectum, dictum quondam D. Jacobum, quum negligentius et incautius se gerere dictus Joannes Dominus Maxwell intelligeret, summa fedissime vindictæ cupiditate flagrans, consilium cum dicto Carolo Maxwell vocato de Kirkhouse, in mensibus Martio et Aprili proxime preteritis, iniit, quibus potissimum dolis dictum quondam D. Jacobum Johnstoun in insidias pertrahere et proditorie occidere possit ; tandemque concluderunt D. Robertum Maxwell de Spottis militem, nominibus vtrique charum et fidum, ad dictum D. Jacobum in insidias pertrahendum maxime idoneum futurum ; ideoque vocato ad se dicto D. Roberto, dictus Joannes Dominus Maxwell diligenter cum eo egit, vt dictum quondam D. Jacobum ad colloquium ad se pertraheret, vt et aretorem amicitiam et familiaritatem contrahere, et dicti D. Jacobi opera criminum suarum veniam obpredictarum rebellionum, multarumque aliarum, propter Literarum nostrarum in annis 1603, 1604, 1605, 1606, 1607, et 1608, contra se, sub pena rebellionis et ad cornu nostrum denunciationis, directarum contemptum, a nobis obtinere possit : Quod quum dictus D. Robertus revera expeti existimaret, dicti Joannis hortatu, fide prius ab eo data, congressum dum tutum et regressum pacificum et indemnem futurum, cum dicto quondam D. Jacobo sepius egit, eidemque tandem persuasit vt dictum Dominum Maxwell vno tantum comitatus amico, se arbitro, ad effectum predictum pacifice conveniret, sancte promittens, nomine et mandato dicti Joannis Domini Maxwell, accessum et recessum ei securum, tutum, et incolumem

futurum ; quibus adductus perſuaſionibus et promiſſis, dictus quondam D. Jacobus, ſexto die menſis Aprilis vltime elapſi, accito ſecum *Gulielmo Johnſtoun* vocato *de Lockerbie*, gladio, ſine vllis alijs armis, accinctus, dictum D. Robertum Maxwell ſecutus ad moram inter Arthurſtane et Trailflat pervenit, vbi duos equites adventum ſuum operientes percepit, dictique D. Roberti hortatu paulatim in eo loco ſubſtitit, donec D. Robertus progrediens dictoſque duos equites Joannem Dominum Maxwell et Carolum Maxwell vocat. de Kirkhous eſſe perſpiciens, adduxiſſe ſe dictum D. Jacobum Johnſtoun ad deſtinatum colloquium declaravit, a dicto Domino Maxwell jurisjurandi privs dati, pro dicti D. Jacobi et Gulielmi Johnſtounes incolumitate, ſaluoque et tuto acceſſu et reſeſſu a dicto colloquio, renouationem exegit ; et Dei nomine et Numine interpoſito, a dicto Domino Maxwell pro ſeiſpo et dicto Carolo Maxwell obtinuit : Sicque dictum quondam D. Jacobum Johnſtoun, tot promiſſis et juramentis fidentem, ad locum colloquio deſtinatum ad dictum Dominum Maxwell aduxit, et mutua data et accepta, vt inter amicos fieri ſolet, ſalute, detectis capitibus congreſſi, dicto Carolo Maxwell et Gulielmo Johnſtoun imperarunt vt ſeorſum ſubſiſterent, ipſique ad colloquium ita progreſſi ſunt, vt, D. Roberto Maxwell medio, vnus ei ad dextram, alter ad ſiniſtram obequitaret : Dumque de rebus ob quas convenerant pacifice et vti videbatur amanter colloquerentur, dictus Carolus Maxwell, ita vti prius inter eum et dictum Joannem Dominum Maxwell convenerat, ad dictum Willelmum Johnſtoun, contra quem conſtitutum erat, acceſſit ; et vt diſcordie et rixe auſam naciſceretur, adeo ingratum ſibi illum congreſſum eſſe affirmavit, vt ſi illius cauſam prius intellexiſſet, ei ſe haud affuturum profiteretur. Reſpondenti vero Gulielmo, ſperare ſe colloquii illius finem dictis nobilibus viris amicisque et clientibus eorum gratum et vtilem futurum : Id fieri non poſſe Carolus aſſeruit, dictumque D. Jacobum, omneſque alios Johnſtones, latrones et proditores vocavit. Gulielmus autem, ne ſua culpa diſcordie initium preberetur, dixit ſe quamlibet iniuriam paſſurum, potius quam duorum colloquium diſturbaturum ; et quamvis, tanta dicti Gulielmi patientia fruſtratus, Carolus nullam pugne occaſionem inveniret : Illud tamen quod prius intenderat omnino peracturus, dictum Gulielmum, nec verbo nec facto prouocatus, crudeliter et proditorie parato ſclopō invaſit, et pallium et veſtes eius duobus globalis tranſmiſit ; cujus fragore, et Gulielmi voce proditorie vim vite ſue inferri clamantis, turbatus quondam D. Jacobus Johnſtoun, ab eo ſe convertens, et que tam fedi facinoris cauſa eſſe rogans, dictus Joannes Dominus Maxwell, a tergo, dicto quondam D. Jacobo Johnſtoun, nil tale metuenti, imminens ſclopō, quem ſub palio clam paratum habebat, in dictum D. Jacobum, proditorie directo, per humerum duabus glandibus plumbeis venenatis¹ in corpus et

¹ This circumſtance of the two lead BULLETS having been previously POISONED, is a very ſtrong fact againſt Maxwell ; and if borne out by the evidence, ſatisfactorily proves the deadly intention of

vitalia eius addictis, eum inhumaniter, crudeliter, fede, et proditorie occidit ; ac sub fide, fiducia, affecuratione, et potestate sua, vulgo *vnder his trust, credit, assurance, and power*, trucidavit ; contra fidem datam et amicitiam initam coram dictis Consilij nostri dominis, et dicti D. Roberti Maxwell, intervenito sepius juramento, per dictum Joannem Dominum Maxwell renovatam. QUORUM criminum dictus Joannes Dominus Maxwell est conscius, et particeps, ars et pars ; ideoque penas Lese Maiestatis iis jure constitutas, ut antea dictum est, subire et perferre debet. TERTIO, quia, tam Communi gentium omnium quam Civili Romanorum Jure, et regni nostri Legibus statutum, et ultra omnem memoriam recepta et approbata consuetudine observatum est, eum qui Maiestatem publicam leserit, cuiusque opera, consilio, dolo, malo, consilium initum est, quo quis contra Rempublicam arma ferat, aut qui Lese Maiestatis reum in vincula coniectum dimiserit, Maiestatis teneri : Ac vero manifestum est, dictum Joannem Dominum Maxwell, in Arcem Edinburgenam, quia nostris Consilii nostri mandatis obtemperare pertinaciter recusaverat, in custodiam missum, consilium cum JACOBO M'CONNELL *de Dunyreg milite*, in eadem Arce, ob multa Lese Maiestatis et Proditionis crimina in vinculis detento, inisse ; quibus potissimum rationibus de dicta custodia violenter et proditorie, in Maiestatis nostre manifestum contemptum et lesionem, erumperent, et afflito in scelerosis conscientiam dicto ROBERTO MAXWELL *de Dunwidie*, conspirasse, ereptis custodum armis illis, sibi exitum e dicta Arce per vim proditorie parare ; quod ut facilius perfecerent, . . . die mensis Decembris, anno 1607, ad hilariorem et liberiores computationem novitatis, invitatis custodibus, gladiisque illorum per vim ereptis, ipsos deinde custodes in cubiculum obsecratum inermes incluserunt, et ad interiorem dicte Arcis januam armati accedentes *Alexandrum Strutheris* ejus custodem, quia pro sua in nos fide eos exitu prohibere conatus est, multis vulneribus, in capite, brachio, manu, aliisque corporis partibus, faucium et prope exanimem prostraverunt ; et ob parem causam *Margareta Philop*, vxore eius, barbaramente et crudeliter etiam vulnerata, per dictam januam interiorem ad mediam Arcis portam pervenerunt, ubi *Archibaldum Cunyng-hame* illius custodem, claves tradere recusantem, proditorie etiam invaserunt, et in brachio crudeliter vulnerato claves ei violenter eripuerunt ; et aperta per vim porta proditorie erumpentes, muro qui Portam urbis Occidentalem pertingit transverso, dicti Joannes Dominus Maxwell, et D. Jacobus M'Connell, proditorie et

Lord Maxwell, who, in appointing this meeting, had unquestionably predetermined the destruction of his rival. On the other hand, it seems clear that the Laird of Johnstone, his attendant, and Sir Robert Maxwell, their mutual friend, were only possessed of their side-arms, the distinguishing mark of a Gentleman at that period. It is well worthy of remark, that Sir Walter Scott relates, that ' while the gallant old knight lay dying on the ground, Maxwell rode round him, with the view of completing his crime ; but Johnstone defended himself with his sword, till strength and life failed him.' It is unnecessary, here, to enter into any detail on these points, as such copious illustrations have been given in the Notice and Appendix to this Trial.

violenter aufugerunt ; donec sub Castellam nostri et aliorum fidelium subditorum insequentium diligentia, captus et in carcere retractus est, dictus Jacobus M'Connell ; dicto Joanne Domino Maxwell celeri fuga euadente : Sicque, Joannes Dominus Maxwell Maieftatem nostram lefit, eiusque opera, consilio, dolo, malo, consilium initum est, quo arma contra nos per seipsum et dictos Jacobum dominum M'Conneill et Robertum Maxwell de Dunwiddie lata sunt, ac etiam dictum Jacobum M'Conneill militem Maieftatis reum in vincula coniectum dimisit, dictorumque omnium Lese Maieftatis criminum conscius, et particeps, ars et pars fuit et est, et penas iis a jure constitutas subire et perpeti debet. ET PROPTEREA, dictus Joannes Dominus Maxwell ad videndum et audiendum, per nos, dictumve nostrum Commissionarium et Justiciarium, ac dicti nostri regni Scotie ordines, decerni et ordinari, se, predicta Lese Maieftatis crimina, per seipsum et alios ipsius mandato et persuasione, consilio, auxilio et ratihabitione comississe et perpetrasse ; ac eorum conscius et participem, vulgo *airt and pairt*, fuisse et esse ; ideoque penas dictis Proditionis et Lese Maieftatis criminibus competentes ferre et subire debere, vite, scilicet, et bonorum omnium, mobilium et immobilium, terrarum, tenementorum, dignitatum, officiorum, jurium, aliorumque omnium ad se spectantium, amissionem et confiscationem ; dictasque terras, predia, bonaque omnia, mobilia et immobilia, dignitates, officia, jura, aliaque omnia ad dictum Joannem Dominum Maxwell spectantia et pertinentia, vel que ad illum spectare et pertinere vlllo modo potuerunt, nobis confiscari, ad nos pertinere et perpetuo nobiscum in proprietate permanere : ET ulterius, in premissis respondendum et juri parendum : Intimando dicto Joanni Domino Maxwell, quod siue, dictis die et loco, cum continuatione dierum, comparuerit, siue non, nos tamen dictusue noster Commissionarius ac Justiciarius, et dicti regni nostri ordines, in premissis, justitia mediante, procedemus et procedent. Insuper summoneatis ad comparandum coram nobis, nostroue Commissionario ac Justiciario, et dictis regni nostri statibus, in dicto Parlamento, dictis die et loco, hora causarum, cum continuatione, ad perhibendum fidele testimonium in premissis, sub pena legis : Et presentes literas debite executas et indorsatas earundem latori reddatis. Et vos qui presentes executi fueritis sitis ibidem dictis die et loco, cum continuatione dierum, coram nobis dictoue nostro Commissionario et Justiciario, ac tribus regni ordinibus, portantes vobiscum vestre summonitionis testimonium, in scriptis, pro premissis aut ipsos testes. Ad quod faciendum, vobis et vestrum cuilibet, coniunctim et divisim, vicecomitibus nostris in hac parte, nostram plenariam virtute presentium committimus potestatem. Datum sub testimonio nostri magni Sigilli, Apud Edinbur⁴ vigesimo sexto die mensis Januarii, anno domini millesimo sexcentesimo nono, et regni nostri annis quadragesimo secundo et sexto.

THE quhilk summondis, with the executiones and indorsationes thairof,

being this instant day red, in presens of our fouerane lordis Commiffionar and Estaittis of Parliament, first in Latine and thaireftir in Scottis, the said Johne Lord Maxwell, being oft tymes callit of new at the tolbutth window of the said burcht of Edinburcht, to haue compeirit, &c. And he nocht compeirand to haue defendit in the said mater, and to haue answerit to the said summondis, the said Sir Thomas Hammyltoun of Bynnie, kny^t, Aduocat to our fouerane lord, desyrit the saidis Estaittis declaratioun, gif the reffounes of the said summondis wer relevant aganis the said Lord Maxwell. The quhilkis Estaittis fand the said summondis, and the reffones and causses thairin contenit, and euerie ane of thame relevant. Thairfor the said Aduocat, of new, for preving of the foirsaidis thrie reffounes and euerie ane of thame, beirand and contenand as is abone writtin, repetit all the Depositiones of the Witneffes, examinat befor the saidis Lordis of Artielis, and Lordis of the Secrete Counsaill, respectiue, with diuerse Actis of Parliament, Lawes and constitutionis of this realme, Sir James M^cConcillis Convictioun, &c. with all vtheris wryttis and probatiounes producit of befor, this instant day, be the said Aduocat, ffor preving of the foirsaidis summondis of Treassoun, and hail thrie reffounes and causses contenit thairin, and euerie ane of thame; and desyrit the saidis Estaittis of Parliament to advyse the probatiounes foirsaidis led and deducit in the said mater, and to pronounce thair Sentence of Parliament thairintill, according to the famin probatiounes, and thair consciences: And thaireftir, the hail wryttis, Depositiones of Witneffes and probatiounes being red, sene, and confiderit be the saidis hail Estaitis of Parliament, and they thairwith being ryplye advyfit,

VERDICT, The saidis Lord Commiffionar and Estaittis of Parliament, ffindis, decernis and declaris, that the said Johne Lord Maxwell Committit and did oppin and manifest Treffoun, in all the pointis, artielis and maner contenit in the said Summondis: And thairfoir, it wes gevin for dome, be the mouth of David Lyndfay, dempfter of Parliament, in maner and forme as followes:

SENTENCE. This Court of Parliament schawes for law, the said **JOHNE LORD MAXWELL** to haue committit and done all the foirsaidis crymes of Treassoun and Lefemajestie, be him self, and vtheris of his causing, command, assistance and ratihabitoun, aganis oure said fouerane lord and his autoritie; and that he is and wes giltie and pairtaker, airt and pairt, of the famin crymes of Treassoun; all in maner at lenth contenit in the reffounes of the said summondis: And thairfoir, Decernis and Declairis, that the said Johne Lord Maxwell aucht and sould vnderly and suffer the paynis competent to the saidis crymes of Treassoun and Lefemajestie, to wit, the tynfall and confiscatioun of his lyfe, and all his guidis, moveable and vnmmoveable, landis, tenementis, digniteis, offices, richtis, and all vtheris thingis belanging to him; and all the saidis landis, rowmes, and all gudis

moveable and vnmoveable, digniteis, offices, richtis, and all vtheris belanging and pertening to the said Johne Lord Maxwell, and quhilkis may ony way belang and pertene to him, to be confiscatt, to pertene to our said souerane lord, and to remane with his Maiestie for euir in propertie. And this I gif for dome.

APPENDIX OF ORIGINAL DOCUMENTS, ILLUSTRATIVE OF THE TRIAL OF JOHN LORD MAXWELL.

I. DEPOSITIONS *taken before* THE LORDS OF PRIVY COUNCIL, *relative to the* *Escape of* LORD MAXWELL *and* SIR JAMES MAKONEILL *from the Castle* *of Edinburgh.*¹

(1.) DEPOSITION of *Archibald Cunynghame, Master Porter of the Castle of Edinburgh.*

At the Castell of Edinburgh, the xv day of Januar, 1608.

ARCHIBALD CUNYNGHAME, Maister porter of the Castell, sworne and demandit what he knawis of the mater foirfaid of the breking of Warde? Deponis, that he, being sittand in his chalmer in the yett,² he send his boy to hane fetchet him a drink: In the meantyme, Williame Maxuell of Kirkhous come to the deponer and defyrit him to oppin the yett; and that immediatlie *the Lord Maxwell* him self come and cryed, ‘ffals knave, oppin the yett!’ And the deponer refuseing, and begynnand to hane fpokin to the Lord, he cryed agane, ‘ffals knaif, oppin the yett!’ And with a drawin sward gaif the deponer ane greit straik vpoun the arme; and mynting³ again to haif struckin the deponer, he wes stayed be Williame Maxwell of Kirkhous, who threw the keyis frome the deponer, efter that he wes hurte, and oppynit the yett. And deponis, that the Lord Maxwell wald haif flane the deponer, wer nocht he wes stayed be Williame of Kirkhous.

(2.) DEPOSITION of *Alexander Struthers, Porter of the Castle of Edinburgh.*

ALEXANDER STRUTHERS, Porter, sworne and examinat vpoun his knowlege of the interprise foirfaid, deponis, that Williame Maxwell of Kirkhous come to the yett,⁴ and cryed, ‘Porter, oppin the yett, and latt me oute!’ And the deponer having oppynnit the yett, Williame Maxwell past oute,⁵ and then patt his bak to the wickett of the yett, to haif stayed the deponer fra closing of it: And the deponer preasing to haif clost the yett, *the Lord Maxwell* and *Sir James Mcconeill* and Robert of Dynwyddie come to the yett; and the Lord Maxwell, with a drawne swerde, straik the deponer vpoun the hand, and Sir James gaif the deponer ane straik with ane sward vpoun the heid: And thay haueing past oute at that yett, the deponeris wyffe meiting with thame betuix the yettis, and trying to have relevit the deponer, hir husband, the said Sir James gaif hir ane straik vpoun the heid; and that scho refflaued fundrie vther straikis, bot knawis nocht who gaif thame.

(3.) DEPOSITION of *Sir James Makoneill, knight.*

At the Castell of Edinburgh, the xv day of Januare, 1608, &c.⁶

(4.) SECOND DEPOSITION of *Archibald Cunynghame, Master Porter of the Castle of Edinburgh.*

APUD ED^B, xx Junij, 1609. WITNESSES *producit be the Adrocat, for preving of the Third*
Reffounne of Tresfoun anent the Breking of Ward furth of the Castell of Edinburgh.

ARCHIBALD CUNNINGHAME, Porter of the Castell of Edinburgh, of the aige of lxij yeiris, or thair-by, deponis, that vpoun the fourt day of December, the yeir of God 1607 yeiris, this deponar for the tyme, about fyve horis befoir supper, sittand in the myd Porter-hous of the Castell of Edinburgh, and

¹ The following Depositions are taken from the Originals, preserved in his Majesty's General Register House, Edinburgh.

² In the Guard-house, at the inner gate.

³ Essaying.

⁴ Viz. the second gate, kept by the

under Porter, or ‘Keeper of the Inner-yett.’

⁵ As a visiter permitted to see his friends in ward.

⁶ See his Trial, May 13, 1609, Vol. III. page 10, where this Paper is given at length.

the key being in the wicket of the said mid-gate, William Maxwell of Kirkcubright cummies further of the Castle, and defies this deponent to open the wicket; and as the deponent was willing to half open the said wicket, the Lord Maxwell came upon this deponent with an drawn sword, saying, 'Fals knave! open ye gate, or else I shall hew the all in blades!' The deponent answered, 'Schame theif! what art ye doing heir?' And then the Lord Maxwell incontinent strake at this deponent with his drawn sword, and murthered him of his left arm; and gif the said William Maxwell had nocht saved the deponent from the said Lord Maxwell's furie, he had slane the deponent. Then the Lord Maxwell opened the wicket, and he and Sir James Mackenzie past further thairfor, and past to the west Castle wall that goes to the West-port of Edinburgh, and havinge clumme that wall, the said Lord Maxwell eschaped with flight¹ flycht; and the Constable of the Castle, with vtheris keepers thairfor, apprehended Sir James Mackenzie, and brocht him bak agane and put him in the irons; and William Maxwell left the Lord Maxwell at the utter gate, quhair he was lykways tane by the Constable; and hard nocht quhen Alexander Strutheris, keeper of the Inner-port, was forced and hurt by the Lord Maxwell; and never hard any tumult quhill the Lord Maxwell came upon him self.

(5.) SECOND DEPOSITION of *Alexander Struthers, Keeper of the Inner Yett.*

ALEXANDER STRUTHERIS, keeper of the Inner-gate of the Castle of Edinburgh, of the aige of 12 years, or thairby, mareit, deponis, That upon the ferd day of December, 1607 yeiris, this deponent, about fyve hours at night, sittand in the Inner-porter-hous of the Castle of Edinburgh, and havinge the keys of the Inner-gate hyndand² upon his arme, William Maxwell of Kirkcubright, servant to the Lord Maxwell, came to this deponent and defied him to open the gate, and the deponent havinge opened the inner wicket, and the said William havinge past furth thairfor, the said William stayit the deponent to cloise and loik the wicket of the Inner-gate, and in the mentyme of the stryff, John Lord Maxwell, Sir James Mackenzie, and Robert Maxwell of the Tower, all thrie with drawn swords in thair handis, came to this deponent, and the Lord Maxwell with his sword first strake at the deponent, and cutt his left hand: Thairefter Sir James Mackenzie and Robert Maxwell, ilkane of thame, gaif him bluidie strais in his heid, and the deponent cryand 'Fy! Treffoun!' Margaret Philp, his wyff, come further to help the deponent, (quha was lykways voundit by the foirsaids personis,) and gat four bluidie strais in his bodie: And in the mentyme, quhill Robert Maxwell and this deponent war in gryppis and stryff, the said Lord Maxwell and Sir James Mackenzie past further of the said Inner-gate, the quhill Inner-gate this deponent than lokit and held in the said Robert Maxwell, quha incontinent thairefter lap the said Castle wall, and eschaped further thairfor; and within ane hour thairefter this deponent saw Sir James Mackenzie brocht within the said Castle by the Constable, quhair he zit remanis, lyand in irons.

(6.) DEPOSITION of *Thomas Home, Constable of the Castle of Edinburgh.*

THOMAS HOME, Constable of the Castle of Edinburgh, of the aige of 14 yeiris, or thairby, mareit, deponis, That upon the said ferd day of December, 1607 yeiris, the twa Inner-ports of the Castle of Edinburgh beinge forced and opened by the Lord Maxwell and Sir James Mackenzie, efter that thai had hurt the tua portaris, and had loppin the wall about the West Port. This deponent, upon the cry of the wechmen, followit thaim with diligence; and as he cam neir the Barres,⁴ certane men at the West Port tauld to this deponent, that ane of thaim that had brokin ward was lyand in ane meiddane,⁵ and had irons upon him: And thairefter this deponent brocht Sir James Mackenzie bak agane to the Castle of Edinburgh, quhair he zit lyes in irons. And the deponent saw the said tua Portaris bayth hurt, quhen he come in with Sir James Mackenzie to the Castle of Edinburgh agane.

(7.) DEPOSITION of *William Symfons, soldier in the Castle of Edinburgh.*

WILLIAM SYMSONE, ane of the souldaris of the Castle, of the aige of xxvj yeiris, or thairby, mareit, deponis, that upon the ferd day of December, 1607 yeiris, about fyve hours, befor supper, the Lord

¹ Hasty, precipitate.

² Fifty.

³ Hanging.

⁴ The *Hastidudium*, or 'Barra,' under the Castle, where, for a long series of years, the Tilts and Tournaments had been held. It was situated near what are still called the King's Stables, at the West Port of the city.

⁵ A midden, or dunghill.

Maxvell come to Sir James M'coneillis chalmer to pas his tyme, according to his custome; quhair war present, for the tyme, the Lord Maxwell, Sir James, Young Cloiburne, Robert Maxwell of the Tour, William Maxwell of Kirkhous, William Armstrang of the Gingillis; and efter that the Lord Maxwell and his colligis had marchit throuche the chalmer, be way of pastyme, for the tyme, he come to this deponar, quha than was speciall kepar of Sir James M'coneill, and haveing put his hand within this deponaris fuord gardis, preiffit to haif drawin the famin, bot being impedit be this deponar, the Lord Maxwell tuik from William Maxwell his quhinger, and held the famin to this deponaris breist, sueiring with ane great ayth, that gif he lat nocht the fuord cum, he suld stik him with that quhinger. Then this deponar, for feir of his lyiff, deliuerit his fuord with the scabert to the said Lord Maxwell, and thairefter the Lord Maxwell come to James Stewart, his awin kepar, and William Armstrang, and tuik from thame ilkane of their fuordis; and gaif ane of the fuordis to Sir James M'coneill, the vther to Robert of the Tour, and keptit the thrid to him self, vtterand thir wordis, 'All gud fellowis that luiffis me, follow me! For I fall ather be furthe of the Castell pis nycht, or ellis I fall loife my lyiff!' And then the Lord Maxwell and his colligis haveing past furthe of the said Sir James chalmer, he clofit within the famin chalmer, Young Cloiburne, William Armstrang, James Stewart, and this deponar, and feschynnit the famin dure with the catbande, that thai mycht nocht oppin the famin; saying, he rowit to God, that, 'Gif ony of them suld cry, he suld cum bak agane and tak thair lyiffis!' And this deponar haveing maid the dure fast within, cryit furth at the Southe vyndow towardis the West Port, 'Tressoun! Tressoun!' And be that cry the men of the West Port come and apprehendit the said Sir James M'coneill.

(8.) DEPOSITION of William Armstrang in the Chengillis.

WILLIAM ARMSTRONG in the Chengillis, of the aige of xxx yeiris, or thairby, mareit, deponis *conformis immediate preceden. Gulielmo Symfoun, in omnibus; reddens eandem causam scientie*; becaus that famin nycht that the Lord Maxwell and Sir James M'coneill past furthe of the Castell of Edinburgh, this deponar was present in Sir James M'coneillis chalmer, in cumpanie with the Lord Maxwell and remanent personis foirfaidis, all myrrie be drinking of wyne. This deponar saw the Lord Maxwell tak the thrie fuordis from the foirfaidis thre personis, and past furthe of the dure, and clois the famin efter him, saying, 'Gif ony of tham cryit, he suld tak thair lyiffis!' And this deponar was ane of tham that was clofit within the chalmer, be the Lord Maxwell; be resioune that he refusit to accompanie the Lord Maxwell, in breking ward.

II. DEPOSITIONS taken before the Lords of Privy Council, relative to the Treasonable Murder of SIR JAMES JOHNSTONE of that Ilk.

(9.) DEPOSITION of Sir Robert Maxwell of Spottis.

AT Edinburgh, the xxviij day of Aprile, 1608, In presence of the Lords of Secrete Counsaill.

SIR ROBERT MAXWELL of Spottis, sworne and examinat vpoun the forme and maner of the Slaught of the Laird of Johnstoun, and of the said Sir Robertis awne cariage and behaviour, in that mater; Deponis as followis: *Firft*, that the Laird of Johnstoun desyrit the deponar, being in his house of Lochwood for the tyme, to speik the Lord Maxwell, quhen he fand the oportunite, to sie yf the deponar could mak a good in the materis betnix thame. To quhom the deponar ansuerit, that he wes a feiklie man, and had no credite at the Lord Maxwellis hand; becaus the Lord Maxwell haid evir a mislyking of him, becaus he maryed Johnstones suster. And deponis, that he said to the Laird of Johnstoun, that he had no will to mell in that turne, becaus it wes so weghtie a mater; and the Lord wes a perellous man to haif ado with! And denyis that evir he proponit that mater to the Lord Maxwell, in the Laird of Johnstonis name, as haveing directioun from him. DEPONIS, that aucht or nyne dayis afor the Slaughter of the Laird of Johnstoun, the Lord Maxwell fend Edward Maxwell,

fone to the Laird of Tynwall, to the deponer, to desyre him to 'come and speik with his lordship.' And the deponer, mislyking the messinger, refusit to gang to my Lord, saying that he stood in that estait that he nicht not weill speik with him. And yit the principall caus that movit the deponer to refuse to go with him, wes the mislyking of the messinger, fering that he sould reveill it. Thairefter, that same day, the deponer send Johnne Maxwell, his awin fervand, to my lord, to vnderstand his l. will and pleafour, and desyre his l. to schaw any thing he had to say to the said Johnne, als yf the deponer haid bene present: And that my lord refusit to schaw any thing to Johnne, quhill he mett with the deponer him selff; and willit Johnne to tell the deponer, that he desyrit to meitt with him at efter none. Quhairvpoun the deponer raid to him to Kirkennane hill; and at thair meeting, my lord sayd to the deponar, 'Cofine, it wes for this caus I fend for 5ow. 5e see my estait and danger I stand in; and I wald crave your counsell and avise, as ane man that tenderis my weill.' To quhom the deponer ansuerit, that the mater wes so far past, as hardlie could he gif his l. ane counsaill; and gif he haid a counsaill, he wald gif him the best he could. The deponeris opinioun wes, that he sould keipe him quiet, and do no thing quhill nicht offend the Kingis Maiestie farder nor he had done; and that he wald move the noblemen, who wer his freindis at Court and Counsell, to report the best of him to his Maiestie and Counsell. And the Deponer sperit at him 'In quhat estait his l. and his nichtbouris, the Barones of the countrey, stood into?' His ansuer wes, that he could not weill tell that him selff. Vpoun thir speiches, thay fell in speiking with the Laird of Johnnstoun; and my lord desyrit to gett him knowledge, yf the Laird of Johnnstoun had bene ane platter aganis him, sen thair aggreement? And quhat he nicht look for att his handis in tyme comeing? The Deponeris answer wes, that he knew no thing of that mater, whill he haid spokin with Johnnstoun, or gottin his ansuer, in wryte; and at that tyme he could not meete with him, becaus he wes to ryde to Edinburgh for some of his awne adois. And my lord desyrit the deponer to wryte in his awne name to the Laird, to vnderstand quhat certantie my lord nicht haif of him. And my lord promesit to send to the deponer, in wryte, the headis quhairvpoun the deponer sould forme his bill to the Laird, the nixt morneing; quhill my lord did. And the deponer said to my lord, 'Yf this be a mater that your l. thinkis, in your hairte, 5e can tak vp and remett to the Laird, I will very willinglie travell in the mater and do the best I can; vtherwise, I desyre nocht to mell in it.' To quhom my lordis ansuer wes, that of all evillis the least wes to be tane, seing he had at the Kingis commandment done it alreedy. Yf he saw any willingnes in the Laird to do his dewytie to him, he wald willinglie pas it over, and if he ressaunt ane ressonable answer of the Laird, he wald be content to meete with him, at any convenient place: And promest, that he sould keepe honnestlie, for his pairt and these that wer with him, providing it war keepit quiet, for both their weillis. AND upoun the morne, the deponer ressaunt the headis in a Tickett sent to him to his awne house; quhairvpoun my lord desyrit him to wryte to the Laird; quhill the deponer thinking mistie, the deponer wryte bak agane to my lord, and send his Tickett clost in hes awne Bill, schawing my lord that he wald not deale in that turne, quhill he spak with his lordship, and that he haid the Heidis mair cleirly fett down. Quhairvpoun my lord write bak to the deponar, and desyrit him to meit his lordship at the Kirk of Butill: And the deponar comeing thair and missing my lord, and persaving some personis attending to meit his lordship, the deponer raid away, and wald not meit with him at that tyme; and left ane fervand to tell my lord that he haid bene thair, and was riddin away: And that same nicht, my lord caufit the deponeris man come bak to the deponer, and desyre him to meit him, about the setting of the fone, besyd the place of Butill, at the water syd; quhill the deponar did: And the deponer asking of him quhat he meant be these Articles and headis he had sent vnto him? My lord answerit, that he wes not a good wreater, and wald not commit the trust of this to ane vther; alwise, his meaning wes, that the deponer sould desyre the Laird to cleir him selff that he had not bene a dealer aganis him in tyme bigane, and to lat my lord vnderstand quhat he nicht look for at his handis in tyme comeing. According to the quhills, the deponer wryte to the Laird, and get his

anſwer within tua or thrie nichtis. AND deponis, that he promeiſt to my lord, yf his lordſchip wer in theſe fieldes, that he ſould gett his lordſchipis ane (*own*) anſuer, and bring it to him; bot yf his lordſchip wes not in theſe fieldis, the deponer ſould be in Terriglis vpoun Monunday thairefter, quhair my lord ſould find him. According to the quhilk, my lord appointit his man, Johne Mcbrair, to attend the deponer at Terriglis; and efter the deponer lichtit (*alighted*), Johnne Mcbrair deſyrit him to go and ſpeik with my lord, who attendit him beſyd Haliewode. And deponis that thay mett in the wod, quhair the deponer lute my lord ſee the Lairdis anſwer in wryte; quhilk he red, and (was) weill content thairwith. And thairefter, the deponar takand my lordis faithfull promeis, with my lordis hand ſtrekit in the deponeris handis, that he, nor the man he ſould bring with him, ſould do no wrang, bot keepe honneſtlie, quhidder thay aggreit or not, my lord, with the deponer, ſett down the tryit to be vpoun Wodniſday thairefter, beyond the Houſe of the Beal, betuix thrie and four efter none; quhair ather pairty ſould come accompanied with one onlie, and na vtheris to be preſent bot the deponer: And my lord promeiſt to bring Robert Maxwell of the Tour with him, or ane vther quhom the deponer ſould lyk als weill of, for quhom my lord ſould be anſuerabill. And, parting with his lordſchip, the deponer, vpoun the morne, raid down to the Laird of Johnnſtoun, and tauld him of the appointing of the tryit; who being verie willing to it, and his faithfull promeis to keepe honneſtlie, for his pairte, he, with the deponer and Willie Johnnſtoun of Locurbie, come, vpoun the morne thairefter, agaitward to the tryit, within a myle or thairabout to the place appointit; and in the way, the Laird ſay¹ to the deponer, that quhatevir courſe he tooke with the Lord Maxwell, he wald ever reſerve his dewitie and allegiance to the Kingis Matie, and that he wald counſell my lord to begyn with Sir Williame Craunſtoun, to be at ane point with him, that by his meanis and procurement the Erll of Dunbar micht be intreatit to interceid for his lordſchip, at the Kingis handis; and ſua, comeing within a myle to the place appointit, the deponer lute the Laird ſie quhair my lord wes; and the deponer cauſit the Laird ſtay thair, and he raid fordward to my lord, who wes attending at the place appointit, as ſaid is, and tauld my lord that the Laird was come, according to the appointment; and that he reposit ſo grite traift and confidence in my lord, that he wes onlie ryding vpoun ane amling naig; and that Willie of Lockarbie wes with him and na mae, as his lordſchip himſelf ſaw. And than the deponer of new took my lordeis promeis for keeping of his former promeis and credite, and quhilk my lord frielie gaf: And my lord deſirit the deponer to tak Charlis Maxwellis promeis lykwiſe, who wes with him; quhilk the deponer reſuſit to do; and wes verie miſcontit (miſcontent?) that Charlie wes thair. And than my lord promeiſt to be anſwerable for him. Sua the deponer raid bak to the Laird, and brocht him fordward, and took the lyk promeis of the Laird that he ſould be anſwerabill for his man Willie Johnnſtoun: And aſoir the deponer come from my lord, baith my lord and the Laird commandit Charlie Maxwell to ryd af theme, and not to go towardis Willie Johnnſtoun. And the deponer and the Laird gaf the lyk command and directioun to Willie Johnnſtoun to ryd af them, and not to go toward Charlie Maxwell. AND ſua, my lord, the Laird, and the deponer mett; and mutuall ſalutationnis paſt betwix thame, and they raid togidder, the deponer in the midis, my lord on his left hand, and the Laird on his richt hand; and efter ſome ſpeiches, my lord directit his language to the deponer, and the Laird and the deponer directit thair language to my lord; and ryding thus way, and thair bakis to the vther tua, the deponer lookis about and ſaw Charlie Maxwell go fra the place quhair he wes appointit to ſtay, directlie towardis Willie Johnnſtoun, and efter ſome few ſpeiches betwix thame, quhilk the deponer hard not, the deponer ſaw Charlie Maxwell ſchoote a piſtolett at Willie Johnnſtoun; quhairvpoun Willie gaf a ſchoute and cryed. And thairefter the deponer clappit to my lord, and preiſt to haif tane him be the brydle-renzeis, and, miſſing his renzeis, gat ane grip of his klok, quhilk he pullit to him—and cryed to my lord, ‘Fy! my lord! Mak not ſour ſelf a Trator and me both!’ To quhom my lord anſuerit, ‘I am wytes!’² With this, the Laird of Johnnſtoun ſlip-pit af³ the deponer, and wes ryding for relief of his awne man; and my lord followit him, and behind

¹ For ſaid.² Free of wyte or blame.³ Slipt or ſtole away unperceiued.

his bak, shot him—and raid his way : And the Lairdis horfe making some sturr,¹ his girdis² brack, and the Laird fell ; and efter his fall gat vp agane on his feitt : And Charlie come agane, and offerit findrie straikis ; bott gat not leave to do any harme.

ROBERT MAXWALL OF SPOTTIS.

Tenet cum principali, J. PRYMOIS.³

(10.) DEPOSITION of *William Johnstoun of Lockerby.*

APUD ED^B, *decimo nono Junij*, 1609. WITNESSES *producit for preveing of the Secund Reffoun of Treffoun anent the Slaughter of the Lard of Johnestoun.*

WILLIAME JOINESTOUN, callit of Lockerbie, of the aige of xl yeiris, or thairby, mareit ; deponis, that vpoun the sext day of Aprile, the yeir of God 1608, this deponar cumming to the place of Lochwod, about ane efter none, THE LARD OF JOINESTOUN tuik this deponar to the clois, and said to him, ‘ 3e ar velcum, for I haif ane gritar turne ado with 3ou nor ewir I had befor this day ; I am to meit with the Lord Maxwell, and 3e fall go with me, and loip on vpoun 3our horfe, and raik fordwart to Lytill Lochwod, quhill I owirtak 3ow, and let nane ken quhair 3e ar rydand to.’ Immediatlie thair-etter the Lard of Johnestoun and *Sir Robert Maxwell of Spottis* owirtuik this deponar within ane myle from the Lochwod ; and thei raid altogidder towartis the place appoyntit, quhill thai come to the Cowart-croce, quhilk was within a myle quhair THE LORD MAXWELL and *Charlis Maxwell* was huif-fand⁴ on horfbak togidder. Then Sir Robert Maxwell directit the Lard of Johnestoun and this deponar to stay thair, quhill his returne to thame, or ellis that he gif thame ane sing to cum fordwart, quhilk was be haldin vp of his nepkyn vpoun his wand end.⁵ Schortlie thaireftir Sir Robert Maxwell cumming from the Lord Maxwell, about the mydway betwix the saidis pairteis, the said Sir Robert held vp his nepkyn vpoun his wand end ; and vpoun that singe the Lard of Johnestoun and this deponar raid fordwart to the said Sir Robert. At thair meting the said Sir Robert flew to the Lard of Johnestoun, that the Lord Maxwell, accompaneit with Charlie Maxwell allane, war awayting vpoun thair cumming, and that the Lord Maxwell inquiryt of Sir Robert quho was with the Lard of Johnestoun ? The quhilk Sir Robert anfuerit, that he had tauld to the said Lord Maxwell, that this deponar was onlie in companie with the Lard of Johnestoun ; and that the Lard of Johnestoun, for secrecie of the tryft, was rydand vpoun ane naig, and had left his best hors behind him. Then the Lard of Johnestoun anfuerit, that he was weil content that Charlis Maxwell was rather thair nor ony vther, be ref-soun he was John Murray of Cokpullis sifter-sone ; and at that samyn tyme, Sir Robert tauld to the said Lard of Johnestoun, that he had tane the Lord Maxwellis ayth and promise, vpoun his fayth and honour, that he suld meit fairlie, and depairt fairlie. And that the Lord Maxwell defyrit the said Sir Robert to tak Charlis ayth thairvpoun ; the quhilk Sir Robert refusit to do, saying, that ‘ he wald haif na promise bot the Lord Maxwellis awin promise for his man.’ Lyk as, at that samyn tyme, Sir Robert tuik the Lard of Johnestonis ayth and promise, be his hand laid in his, that he suld meit fairlie and depairt fairlie with the Lord Maxwell, quhiddir thai aggreit or nocht. Immediatlie thairefter Sir Robert raid to the Lord Maxwell, the Lard of Johnestoun and this deponar followand adreiche ;⁶ and thaireftir, Sir Robert havinge an short space spokin with the Lord Maxwell, they turnit towartis the Lard of Johnestoun, and the Lard of Johnestoun towartis thame ; and eftir salutatoun, the Lord Maxwell, the Lard of Johnestoun, and Sir Robert, raid togidder to and fro, the said Sir Robert being in the myddis ; bot quhat thai spak togidder kennis nocht, be reffoun the said Charlis and this deponar stayit about ane pair of but-landis, or thairby, from thame, as Sir Robert Maxwell had directit tham of before : And schortlie eftir that the said Charlis and this deponar had stayit pairt and findrie,⁷ the said Charlis Maxwell cummis first to this deponar, and said to this deponar, ‘ Gif I had knawin of this tryft, the Lord Maxwell nather culd nor suld haif brocht me heir.’ The deponar anfuerit, ‘ I hoip in

¹ Growing restive.

² Girths.

³ Clerk to the Privy Council.

⁴ Riding ; literally, *hoofing*.

⁵ The end or point of his riding switch.

⁶ Leisurely, loiteringly.

⁷ Apart and separate, or asunder.

God, Charlis, 3e fall nocht rew of 3our cumming heir! For pir twa noble men hes bene lang in variance, and I hoip now pai fall aggie.' Then Charlis anfuert, that 'The Lard of Johnstoun was nocht able to mak ane amendis, for the great skayth and injurie he had done to tham!' This deponar anfuert, that 'The Lard vald cum in vill, and do to his powar to satisfie the Lord and his freyndis.' Charlis anfuert, that 'The said thryift was onlie maid to the prejudice of the said Charlis and his freyndis, for that man' (luikand towartis the Lard of Johnstoun) 'had socht his wraik; and thairfor we fuld nocht haif met 3ow, for 3e ar all Traitouris!' The deponar anfuert, 'Charlis, say quhat 3e will pis day, I will mak no anfuert thairto, be resoun of my maisteris promeis.' Then Charlis said, that '3e ar all Traitouris! be resoun 3e slew Francie of Carlile vnder trest.' Then this deponar anfuert, 'Say quhat 3e will this day, I will gif 3ow na anfuert; bot within ane day or twa, gif 3e will send 3our man to me, I fall satisfie 3ow.' And incontinent vpoun that last speiche Charlis schott ane pistolet at this deponar, and shoit him throuche the cloik; and than this deponar preiffit to haif shoit his awin pistolett, and it misgaif, cryand 'Treaßoun!' And the Lard, vpoun that cry, raikit fordwart from the Lord Maxwell; and then the Lord Maxwell, with his pistolett, shoit at the Laird of Johnstoun behind his bak; at the quhilk shoit the Lard shordlie thaireftir fell, and incontinent Charlis shoit ane vther shoit at the Lard and this deponar, being bayth standing togidder: And this deponar, preiffand to haif put the Lard vpoun this deponaris meir, quha throuche waiknes was vnable to loup on, the deponar fett the Lard vpoun the grund; and the deponar halding the Lard vp, and inquiring quhat he had to say; the Lard luikand vp to hevins and said, 'Lord haif mercie on me! Chryst haif mercie on me! I am dissavit.' Then the Lord Maxwell cryit to Charlis, 'Cum away.' Then the said Charlis anfuert, 'My Lord, will 3e ryid away, and leif this bludie theif behiud 3ou?' Then the Lord anfuert, 'Quhat rak of him—for the vther hes anewche!' And then thai bayth raid away togidder.

III. (11.) CONTEMPORARY NARRATIVE of the *Escape of LORD MAXWELL and SIR JAMES MAKONEILL from the Castle of Edinburgh, taken from MS. History of Scotland.*¹

Now, my Lord Maxwell being put in ward, in the Castell of Edinbrughe, and nocht feing how he was to be releiffit, dewyffis with Schir James McConeill and Robert Maxwell of Dinwiddie, quhat way he and thay mycht escheap. And on the fourt of December, he callis ane gritt number of the Keiparis of the Castell into his chalmer, quhair he drinkis theme all fow;² and desyring quhilk of thame voir the best fuord, he gaif ane fuord to Schir James McConeill, and heaffand ane him selff, drawis to the Chalmer dur and lokis them all in. And thay thrie passis fordwartt to the 3ett, quhilk he had caussit ane feruand of his to keip the 3ett fra nocht cuming to;³ bot the porterris, nocht being willing to lett thame go, maid resistance: Bot my Lord Maxwell, being resolut to depairt, strak the Maister porter, and wondis him in his airme; and also findrie of the rest; and ane woman, that maid sum resistance, thay hurtt also: And vinnand out at the inner-3ett, he loppis the wall. Schir James, heaffand the irlis⁴ on him, he, lowpand the toun wall, hurttis his leg; quhairby he was nocht abill to steir; and so was tane and brocht bak in the Castell. Bot the Lord Maxwell, heaffand horse prepairitt, raid his wayis, and Robert Maxwell of Dunwody with him. Quhairat the King was werray far offenditt; and maid Proclamatioune, that nane sould refett him, wuder the payne of death. Bot Maxwell remaynand in the cuntry, thocht thatt the Laird of Johnstoun had the wyt of all his trubill: And feing that thair was (na) meanis to gett the Kingis gude will, bot be the Laird of Johnstoun moyane, quha had slayne his fader, as 3e have hard, and had caussit the King compell him to tak him be the hand, he was in ane grit reade aganis the Lard of Johnstoun, bot buir the same within him selff. And on the wther pairt, the Laird of Johnstoun, thinking that this wes the best tyme to

¹ Advocates' Library, A. 4. 35.² Drunk, intoxicated.³ From closing or shutting.⁴ Fetters.

winne the hairtt of my Lord Maxwell, giff (be) his meanis and trawell he mycht purches his Maieftie's gude will to his lordschip : Quhairwpone, he fendis to Schir Robert Maxwell of Orchortt-toune, kny^t, quha had mareyit the Laird of Johnestoun's sifter, as, also, Johnestoun had mareyit his sifter, to trawell with Maxwell, to sie gif he wald speik with him : And quhat he wald direct him, in that turne, he wald do to the wttirmost of his power. The quhilk the said Schir Robert did, and brocht thame to ane meitting, the sext day of Apryll, the 3eir of God 1608 ; and Chairlly Maxwell with my Lord, and Williame Johnestoun of Lochirbie with the Laird of Johnestoun. Thay mett on the hill besyde the pleace of Ellisfeillis, the said Schir Robert being with thame ; quhair thay, being mett, the tua serwandis rydis a pairt off thame, leaffand my Lord and the Laird and Schir Robert ; bot, or euer thay had conferrit ony speace, the tua serwandis fallis in wordis, and also in schottis of pistollattis, the same cuming be this Chairlly Maxwell's motioun : The quhilk, quhen the nobill menne seis, Johnestoun cryis, ' *Fy ! Red !*'¹ and spurris to thame. And my Lord, being ryding with pistollattis, cumis behind Johnestoun and schuttis him throw the hartt, quhairof he fallis : And yit his curreadge maid him to draw his fuord ; bot being schott neir to the hairtt, he fallis deid. The Lord Maxwell, seing him fallyn deid, giffis him na ma straikis, bot rydis his wayis. Bot albeit he had gottin his lyff, 3it he gat the same with schame, it being gottin wnder tryfing. Quhairfor the King eftemeit the same as Treffoun, being done wnder tryft.

IV. LETTERS *from THE KING and Privy Council of Scotland relative to* LORD MAXWELL.

(12.) LETTER *from THE KING to THE PRIVY COUNCIL OF SCOTLAND, as to the escape of Lord Maxwell from the Castle of Edinburgh.*²

RIGHT trustie and weilbelouit counsingis and counfallouris, We greitt 3ou weelle. The leatt escheap of THE LORD MAXWELL furth of our Castell of Edinburgh, haveing gevein to ws moir nor just caus of discontentment at his foly, We have thocht meitt heirby to direct 3ow how to proceed aganes him. And first, We will this Proclamatioun, heirwith sent, to be publeiffed at all placeis neidfull ; and that 3ow pairefter tak ordour for tryall of all resseattares and suppleares, and caus the extreametie of the law to be prosequit aganes thame. And also 3ou fall, upon ressaît heirof, presentlie send chairges of Treffonne, for the randeriing of his Castellis and houffis, and 3ou fall put garefounnes and keiparis in everie one of the same, to be interteined vpon the rentis belonging to the houffis, wnto such tyme as We doe tak farder ordour thairwith. And als, our will is, that 3ou give particular directiounne to suche as fall ressave the Castell of Lochmabene, that thay mak delyverie of the same to our rycht trustie coising and counfallour the Erll of Dumbar, or to ony wther quhome the said Erll of Dumbar fall direct, with our wther Warrant, for ressaveing pairof. Furthermore, 3ou fall caus charge the principallis of the said Lord Maxwell his name and followaris, being ony way men of mark, to find cautione and fuertie, wnder gritt pecuniall panes, that thay fall noway ressaît, supplie, nor intercommounne with him. 3ou fall in lyk maner geve speciall ordour to our garifounne, wnder the Lord of Scones command, and als to that wther, wnder Sir W^m Cranstounes charge, that thay mak speciall searche, for the said Lord Maxwell his taking and apprehending. And heirof, willing 3ou to be cairfull, and to omit nothing that may haisten ane exemplar pwneithment vpon him, for his prowde contempt, We bid 3ow fairwelle. FROM our Court at ROYSTOUNE, this 14 of Dec. 1607. [JAMES R.]

To our rycht trustie and weilbeloveit counsingis and Counfallouris, the Erll of Dumfermling, our Chancellar and remanent Lordis and otheris of our PRIVIE COUNSALL in that our Kingdome of SCOTLAND.

¹ Agree ; separate ; make up your quarrel.

² From a Collection of State Papers formed by the first Earl of Hadington (at that time Sir Thomas Hamilton), preserved in the General Register House.

(13.) LETTER *from Sir Thomas Hamilton to the King.*¹

Pleafe your most sacred Maiestie,

KNOWING that your Maiestie will expect and requyre of me ane dischaarge of my dewtie, in performing your Maiesties commandement, genuin for persewing the LORD MAXWELL and SIR JAMES MAKONEILL, for thair treasonabill breaking wairde furth of your hienes Castell of Edinburgh, becaus I have hard that sum, whois opinion may have place in sum of the circumstances of thair tryell, inclynes to juge, that, vnles the crymes for the whilk thay wer imprisoned have bene treasonabill, that thair break of wairde can not import Treasoun, I have bene the more solist to inquire of thair vther offensis, which may be found treasonabill of the law: And albeit the Examination and re-examination of Sir James Makoneill I have had small aduantage, in respect of his resolution to deny all the poyntis of his crymes, at the Slauchter of his vnle, and taking of his parentis, whilkis might infer Treasoun; yet I hope that sufficient information fall verie schortlie cum, of the trewth of his most heynous and vnnaturall factis, from those to whom my Lord Chancelar hes writtin, to that effect. As to the Lord Maxwell, I have hard of his raising of fyre at Dalfibbill, whan he slew Willie Johnestoun, callit of Eschiefschiellis and ane vther Johnestoun; bot becaus he hes senfyne had the honour to be admitted to your Royall presence, I wald not presume to summond him for that fact, whill first I sould knaw your Maiesteis mynde thairanent; the knaulege whairof fall lead me to proceed or desist. The progres of the Commissionars at the mynes² I hope your Maiestie hes hard from thameselfis, and what I know I have writtin to my Lord of Dumbar; becaus I fand him most desyrous to vnderstand the successe of that whilk concernit your Maiesties seruice and contentment. Swa, attending most humblie your Maiesties farder pleasour for my directionn, I pray God long to blesse ws with the continuance of your most gracious regne, and your Maiestie with all honour and wisshed contentment. ED^R, this 28 Januar, 1608.

Your most sacred Maiesties most humbill and bundin seruand,

S. TH. HAMILTON.

(14.) LETTER *from THE KING to the Privy Council to apprehend Lord Maxwell.*³

RICHT trustie and veilbeloveit counsies and Counsallouris, We great 3ow weell. We ar informed that, notwithstanding of the treffonable fact committit be the Lord Maxwell in eschaiping fourth of our Castell of Edinburgh, and in forcing and hurting of the keipares and poirtaris of the same, and of our speciall commandis and Proclamatiounes send doune for his taking and apprehending, that, nevertheless, in plane contempt of our autoritie, that he oppinley travellis throuche the countrie, accompaneid with no fewar than twentie horse, and hes mead his repaire, at syndrie tymes, to our burgh of Drumfreis; quibiche insolence is no way tollerabill, and skairse excussabill one 3our pairtis, that ony of our declarit tratouris sould assume to theme selfis so mutche libertie, without controlment. And thairfoir, our pleasour and will is, that vpoun resait heirof, 3ow direct that our Gaird, vnder the command of the Lord of Scoone, to repair to the burgh of Dumfreis, and thare, with that Gaird, vnder Sir W^a Craunstounes chairge, to make a present diligent searche for the said Lord Maxwell, and either to apprehend him or put him out of thois boundis. Thairwith also the Baillies of Drumfreis wald be chairgit to compeir befor 3ow, and if 3ow can try any thing of thair knowledge of the said Lord Maxwellis being in thair toune, We ar to will 3ow to inflict ane exemplare pwneithment vpone thame, baith by fynning and wairding. And als, 3ow ar to proceed in rigoure, according to the warrant of our lawis aganes all resseattares and accompaniaris of the said Lord, that so wtheris may be affrayed from coming within the compas of the lyk contempe. And, remitting those matteris to 3our speciall cair, We bid 3ow fairweill. AT our Palice of QUHYTHALL, the 2 of Febr^{ij}, 1608.

[JAMES R.]

¹ From the original, preserved among the *Denmylne MSS.* Adv. Library.

² At this period the King was deluding himself as to the discovery of silver mines, &c.

³ From *Haddington MS.* General Register House.

(15.) EXTRACT from *Letter, the Privy Council to the King*,¹ relative to Lord Maxwell, &c.

MOIST SACREID SOVERAGNE,

WE have hard, to our gritt greiff and forrow, by the report of your Ma. Secretare and be the Instructions committit be your moist sacred Ma. to his credeit, how far your hienes is discontented with the governament of this Estaitt, as of the hail missfordouris and accidentis that fallis out heir. . . .

As to the particular prosecuting of the Lord Maxwellis reffettares, thair is a number of thame callit, fynned, and wairdit. The rest ar fummondid to particular dyettis, and falbe pwneifchid. As to the particular Slauchter of Cowhill, that feid is weall knawin to your Matie, and no complent of it maid by ony to the Counfall, and these brether of Kirkhoufe had alwyis favour, bot not for the Counfall; and the committer of it is come in England. And quhairas your Ma. is informed, that these who wer appoynted to prosecute the Lord Maxwell hes keipit companie with him, theafe that hes commandement of your Ma^s Guairdis humlie craves tryall of that calunnie; as alsua, that that Cove, quhilk is the allegit place of his reffeat, may be designed; for we cannot find any countrie man that knawis any place in Nithisdail or Galloway that careys that name.

The tryall of that royat, at Drumfres, wes wnder tryall befor your Ma. directione cam, and falbe prosecuted with all regour.

The buriall of the Lord Maxwell wes a calunnie quhairwith many mo (than) your Ma. is importuned; for he lvis still wuburied quhair he wes. And lykways the slauchter of Johnestoun of Howgill ves alyk false.²

AL. CANCELLS. LOTHEANE. VCHILTRIE. BALMERINOKH. SCONE. HALIRUDHOUS.
S. T. HAMILTONE. BEULIE. COMPTROLLER. JO. PRESTOUN.

(16.) LETTER, the *Privy Council to the King, for Instructiones*.³

MOST GRACIOUS SOUERANE,

ACCORDING to your Maiesteis direction, We wryte for the Laird of Johnnstoun, his moder and goode dame, to vnderstand of thame, gif thay wald persist in the persute of that Petitioun, exhibite vnto your Maiestie in thair names, whairby thay craved iustice to be execute vpoun the florseyted Lord Maxwell, for the Slauchter of the laite Laird of Johnnstoun? Thay come all to this burgh, and the Laird of Johnnstoun, with his moder and Tutour, presentit thame selfis before ws, and declairit that thay wald insist in that persute and prosecutionn of that mater, according to the tennour of thair Petitioun. The auld Lady Johnnstoun, through seiknes and inhabilitie of hir persone, being vnable to compeir before ws, haueing, with grite difficultie, come to this burgh for this fame errand, we directit and send the Bishop of Caithnes, the Lord Kildrymmie and Lord Preuey Seale to hir, to vnderstand hir will and pleafoure in this mater; vnto quhome scho declairit, that scho come heir purposelie for that mater, and that scho wald insist, accoirding to the tennour of the Petitioun; sua that now thair restis no farder bot your Maiesteis will and pleafoure to be declairit, quhat forder your Maiestie will haif to be done; wherein, althocht the conclusioun of your Maiesteis Lettre beiris, that we sould proceed to the administratioun of iustice, 3itt, in respect of a worde cassin in the preface of the Lettre, beiring that your Maiestie had not as 3itt gevin a direct ansuer to thair Petitioun, we haif prefomed, first, to acquent your Maiestie afoir we proceed ony forder; and whateuir it fall pleis your Maiestie to direct, in this mater, falbe immediatlie and without delay execute. Thair was a Petitioun gevin in this day vnto ws be Robert Maxwell, bruthir to the said laite Lord, with some offeris to the partie; bot, becaus the mater concernit not ws, we wald not mell thairin; alwyse, we haif heirwith send the fame to your

¹ From the *Haddington MS.* General Register House. The remainder of the Letter (which is very long) relates to a great variety of subjects, entirely unconnected with each other. ² The date of this Letter is omitted, but it must be between Apr. 28 and May 9, 1608. ³ From Original *Dennyhne MSS.* Advocates' Library.

Maiestie, to be confidderit of as your Maiestie sall think goode. So, praying God to blisse your Maiestie with all happynes and felicitie, we rest

ED^R, 28 Aprile, 1613.

Your Maiesteis maist obedant subiectis and seruitouris,

AL. CANCELL^R. HAMILTON. MAR. GLENCAIRNE. ALEX^R HAY. LINLYT^GW. GLASGOW. KINGORNE.

TO THE KING his most sacred and excellent Maiestie.

V. (17.) OFFERS OF SUBMISSION *by LORD MAXWELL for the Settlement of all differences between him and the surviving relatives of SIR JAMES JOHNSTONE of that Ilk, knight.*¹

THIR OFFERRIS following ar maid be me, Johnne, sumtyme Lord Maxwell, for my selff, and in name of my kyn and freindis, to , now Laird Johnstoun, and his Tutouris and Curatouris, Dame Sara Maxwell Ladie Johnstoun, younger for the tyme, his mother, Dame Margaret Scott Ladie Johnstoun, elder, his guddame, and to thair kyn and freindes, for the unhappie Slauchter of vmq^{le} Schir James Johnstoun of that Ilk, kny^t, committit be me.

IN THE FIRST, I humbly confes my offens to God, the Kingis Maiestie, and to the foirfaidis persones, for the said unhappie slauchtir, and declairis my selff to be maist penitent thairfor; craveing first, mercie at the Almightie God for the same, nixt, favour and grace of the Kingis Ma^{tie}, my souerane lord, and forgifnes of the great offens done to the foirfaidis persones; testifeing be my soleme aith, vpone my saluatioun and condempnatioun, that the foirfaid unhappie slauchter was nawayis committit be me vpone foirthocht felonie or fett purpois, bot vpone meir accident: Lyk as, for cleiring thairof, I am content to purge my selff be my greit aith in publict, quhair it pleissis the parteis to appoint, and do quhat farder homage salbe thocht expedient.

SECUNDLIE, I am content, not onlie for my selff, bot for my haill kyn and freindis, to forgiff the slauchter of vmq^{le} Johnne Lord Maxwell, my fathir, committit be the said vmq^{le} Laird of Johnnestoun and his complices, and to mak all persones quha wes ather gyltie, culpabill, or airt and pairt of the said slauchter, in securitie thairfor, sua that thair nor nane of thame sall nevir be trublit for the same be me, nor be nane of my kyn and freindis, directly nor indirectly, in tyme cuming; and, for that effect, sall mak sik forme of securitie as sall agrie with reasonn.

THIRDLIE, becaus . . . Johnnstoun, dochter to the said vmq^{le} Sir James, wes, by the suddant and unhappie Slauchter of hir said vmq^{le} fathir, left vnprovydit of ane sufficient tocher, and for the better avoyding of all inimitie that may arryse betuix the houffis of Maxwell and Johnstoun, and for mair suir establisching of freindschip amangis thame in tyme cuming, I am content to marie and tak to my wyffe the said . . . , without ony tocher.

FOURTLIE, I desyre that the Laird of Johnstoun may be mareit to Dame . . . Maxwell, eldest dochtir to Johne Lord Hereis, and sister dochtir to me, quha is a person of lyke aige with the Laird of Johnstone. Lyk as, I salbe obleist to pay to the said Laird of Johnstoun, in name of tocher with my said sister dochtir, tuentie thowfand merk Scottis; and quhat farder salbe thocht expedient, be the sicht of freindis.

FYFTLIE and last, I am content, for the farder satisfactioun of the hause of Johnstoun, to be Banischt his Maiesteis dominions, for the space of sevin 3eiris, and farder at the will and plesour of the Laird of Johnstoun.

Thir Offeris to be angentit, at the sicht and discretioun of newtrall freindis, to be chofyn to that effect. Vnder protestatioun alwayis, that thir Offerris befor wryttin, maid vnto the partie, be nawayis offensue to the Kingis Maiestie, nor to his hienes Counfall.

¹ From *Sir James Balfour's MS. Collections*, Advocates' Library.

VI. (18.) SUPPLICATION *by* ROBERT MAXWELL, *brother to John, sometime Lord Maxwell*, to THE LORDS OF PRIVY COUNCIL, to *intercede with* THE KING, and with the private prosecutors, &c.¹

MY LORDIS OF COUNSAILL, vnto your l. humblie menis and schawis your l. servitour, Robert Maxwell, brothir to Johnne, sumtyme Lord Maxwell: That quhair, it is not vnknawin to your l. the miserabill estait of my said brothir, be the offences committit be him, to his God, the Kingis Maiestie, to the Marques of Hammiltoun and that name, and to the Laird of Johnnestoun and his freindis, besyde manifold vperis misbehaviouris; for pe quhilkis (being now, throw his miserabill estait, brocht to pe knowlege pair of) he moit humblie cravis mercie of God, favour and grace of his Maiestie his Prince, and forgifnes of his offence done to the Marques of Hammiltoun and his freindis, and to the Laird of Johnnestoun and his freindis: Lyk as, for cleiring of his penitencie for pe offence committit be him in Slauchter of pe Laird of Johnnestoun, he, with all humbilnes of mynd, is maist willing to mak satisfactioun to the partie; vnder protestatioun, that the offer of satisfactioun to pe partie suld nawayis be offensive to his Ma^{tie} nor your l. And his hail freindis haifing, for pat effect, causet pen certane Offeris in his name, to haif bene presentit to the Laird of Johnnestoun, his mopir, and guddame, and for presenteng thair of, haifing desyrit and eirnistlie entreitit certane of pe Ministrie of Ed^r, and sum of the Bischopis to haif presentit the same; thai and all vper men of qualitie hes alluterlie refusit pe same, without pai had your l. Warrand for pat effect: Sa pat now pair restis na menis quhairby pe Offeris may cum to pe pairteis handis, except your (l.) will athir appoint sum perfonas to present the same, or vperwayis that your (l.) wald convene pe partie befor your l., that pe same, in your l. audiens, may (be) red and delyuerit to pame. HEIRFOIR, I maist humblie beseik your (l.) to haif consideratioun of pe premisses, and pat your l. wald gif directioun to sum of pe Ministrie of pis burgh to present pe said Offeris, or vperwayes, that your (l.) wald call pe partie in your prefens, to pe effect foirsaid. And sielyk, that it nicht pleis your l. to acquent pe Kingis Maiestie, our souerane, of pe willingnes of my proper, both to satisfie pe pairteis offendit, and maist humblie, and with all dewtifull obediens, to submit him selff in his Maiesteis handis:—And your l. ansuer.

VII. NOTICES *relative to* LORD MAXWELL'S EXECUTION, *his behaviour and dying Confessions on the Scaffold*, &c.

(19.) ACCOUNT *taken from the Denmylne MSS.*²

VPOUN the xvijth of this monethe adverteisment being maid be the balzies of Ed^r to the late Lord Maxwell, that vpon the nixt Fryday, xxj of this Maij, justice wes to be executed vpon him, at the mercat croce of this burgh of Edinburghe, and he willed to prepair his conscience and dispose him selff to die, he professit to thame his willingnes to abyde the pleasour of God and his Prince, and obtenit Licence of the Counfall that fuche ane number of his freindis nicht haue accessse to speik with him, as he suld requyre, by name. He had diuerse conferences with sundrie of them, in prefens of ane of the Balzies, bot refusit to ressaue ony assistance or confort from the Ministeris, professing him selff not to be of thair Religioun, bot ane Catholik Romane; wherby, it being foirsene be the balzies of the toun and wtheris, that gif he suld at his death enter in any discourse of that subiect befor the people, it nicht breid offence and sclander, he wes desyrit, and yelded to bind him selff, be promise, to forbear at his death all mentioun of his particular opinioun of Religioun, except the professioun of Cristianitie; whiche he senfyne repented, as he declared to the balzies, when they wer bringing him to the scaffold, whare he declared that as he had iustlie deseruit his death, so he wes reddie patientlie to suffer it, asking mercie of God for his sinnis, and hartlie wifhing that his Maiestie nicht be gratioutlie pleased to

¹ From the *Denmylne MSS.*, Advocates' Library.

² Advocates' Library.

accept his lyf and blood as ane different¹ punishment of his offences; and to relent, and remoue his wrathe from his brother and hous, being pleissid to restore his brother to the rank and place of his predeceßoure, where he nicht, and, as he hoped, wald, do his Maiestie guid and faithfull seruice, as his fairbearis had done to his Maiesties Royall progenitouris. Nixt, he askit forgiuenes of the Laird of Johnestoun, his mother, grandmother and freindis, acknawelegeing the wrong and harme done to theme, with protestatioun that it wes without dishonour or infamie (for the worldlie pairt of it—for so wer these his wordis reported to me.) He lykwayis crawled pardoun of Polloke, Calderwode, and his wther freindis, being present, acknaweleging, that whare as he was borne to haue bene authour of thair honour and faiftie, he had procured to thame hairme and discredit. And then he retired him selff neir the block, and maid his prayeris to God; which being ended, he tuike his live of his freindis, and of the balgies of the toun; and, suffering his eyes to be covered with ane handcourchef, offered his head to the axe, and suffered deathe, the xxj of Maij, at four a cloke in the efternone.

(20.) NOTICE from *Minutes of the Privy Council*.²

MAY 18, 1613. Ane Warrant past and expd to the Prouest and Balgies of Edinburghe, to tak the lait Lord Maxwell to thair mercat croce, vpoun the xxj of this instant, and thair to caus strik his head from his body. The delay of tua dayis wes thocht meit to be grantit, to the effect he nicht haue leafer to be resolued; and that the Ministeris nicht haue tyme to confer with him, for his better resolutioun.

(21.) NOTICE preserved by *Calderwood*.³

THE Lord Maxwell was beheaded at the mercate crosse of Edinburgh, betuixt three and four after noone. He died confortlesse, having none of the Ministrie present to pray for him, or make exhortation to him or the people. He desired them not, neither was he content to receave informatione from them tuiching his Religione. This executione was procured be the Laird of Johnstons friends, specially be Sir Robert Ker, Erle of Rochester, the chief guider of the Court at that time. Papists, nevertheless, tooke boldnes to profess their Religione, in fundry parts of the country; for it was well known to them, that Maxwell suffered not for his Papistry.

(22.) NOTICE by *Sir James Balfour*.⁴

THE 21 day of this mounth, Johne Lord Maxwell of Caerlauerock, was takin from the Tolbuith of Edinburghe to the mercat Crosse of the same, quher, on a scaffold, he had his head chopped offe from his bodey, for the slaughter of the Laird of Jhonstone.

Slaughter.

JUN. 28.—HENRIE BLAK, Capitane of the Castell of Kirkwall (Orkney), William Kirknes, Robert Hammiltoun, Williame Davidfoun, alias *Lieriecock*, Magnus Bankis, alias *Johnnestoun*, Ar^d Dundas, Magnus Draver, Gilbert Brabner, fudartis,⁵ and keiparis of the hous of Grenecroft; Johnne Reid in Selfkarie, Gilbert Blak in Farray, Malcolm Mowat in Etha, and James Mowat, thair.

Dilaitit of airt and pairt of the Slauchter of vinq^{le} Donald Grote, (of Wairis,) Walter Grote, and James Stewin, all in Duncanisbey.

¹ Sufficient?

² Minutes of Privy Council Proceedings, *Denmylne MSS.*, Adv. Library.

³ *MS. Church History*, Adv. Library.

⁴ *Balf. Ann.* II. 42.

⁵ Soldiers.

Williame Sinclair of Etha, oftymes callit, as cautioner for repoirting the Letteris duellie execute and indorfate and perfewing thair of, purchest be Margaret Grote, the relict of vmq^{le} Donald, Malcolme, his sone, Johnne Grote, brother to vmq^{le} Walter, and Allafter Stewin, as brother-sone to vmq^{le} James Stewin.

Compeirit Mr Johnne Mansoun, seruitour to my Lord of Katlines (Caithness), and producet ane Warrant of the Lordis of Secreit Counfall, anent the deserting of this dyet; quhair of the tennour followis.

JUSTICE, Justice clerk and your deputis. Forfamekill as the xxvij day of Junij instant is appointit to Henrie Blak, Malcolme Mowat, Williame Kirknes, and certane vperis pair complices, tennentis and fervandis to be ERLE OF ORKNAY, for pair compeirance befor ȝow, to vnderly the law for pe Murthour of vmq^{le} Donald Grote of Wairis, and sum vtheris, tennentis and fervandis to be ERLE OF CAITHNES: And seing, all differences and questiones standing betuix the saidis Erles of Orknay and Caithnes ar reconciliat and agreit, except pe said Murthour, the persute quhair of, be baith the saidis Erles consentis, is continewit to ane vper dyet, to be persewit, aper befor pe Justice or his deputis in the bur^t of Ed^r, or in Caithnes. Thairfor, theas ar to command ȝow to desert pe said dyet, and desist fra all proceeding pairin; dispensing with the personall compeirance of pe pairtie. Quhair-anent thir presentis falbe ȝour Warrant. Subferyuit with our handis, ATT ED^r, pe xxvij day of Junij, 1609.

AL. CANCELL^{RIUS}. DUMBAR.

The Justice Desertit the said dyet: Quhairvpoune the said Mr Johnne askit instrumentis; and protestit for the said Williame Sinclair of Etha, his releif of his cautionerie; quhilk the Justice admittit.

Burning the Place of Littlegill — Slaughter — Stouthreif — Horse and Cattle-Stealing, &c.

Aug. 9.—THOMAS JARDANE of Birnok, and Vmphra Jardane his sone.¹

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Johnne Tuedie of Southwoid, . . . Broun of Coulter, Williame Campbell of Walwoid: And certain other crymes of Thift, &c.

PERSEWARIS, Elspeth Bailzie, mother to vmq^{le} Johnne Tuedie; Bessie and Sibilla Tuedeis, his sisteris; Robert Tuedie, his brother; Williame Broun, brother to vmq^{le} Robert Broun; Williame Broun, as sone to the said Robert; Mathow Bailzie, brother to vmq^{le} Alexander Bailzie; and as fader to vmq^{le} Rachael Bailzie, persewis Vmphra Jardane allanerlie; Charles Campbell of Horfclench, neir kynfman to vmq^{le} Williame Campbell of Walwoid; Hew Campbell of Garallane, for himself; Johnne Farquhar in Cavill, for himself; George Slowane in Knokburne, for himself; Williame Campbell, as sone to the said vmq^{le} Williame; Charles Murray, for himself. Sir Thomas Hammiltoun of Bynnie, kn^t, Aduocat to our souerane lord, for his hienes entreis.

PRELOCOUTOURIS for the pannell, The Laird of Lamnyngtoun, The Laird of Carmichell, The Laird of Covingtoun, Williame Carmichell of Rownetricorfe, Mr Johnne Russell, Aduocat.

DITTAY against Thomas Jardane.

FOR airt and pairt with the said Vmphra, his sone, of the tressonabill Raifeing of ffyre, burning and distroying of the Place of Littlegill, with the baill offices, houffes, barnes, insicht and pleniffing, being thairintill, worth the fowme of ffyve thowfeand pundis; committit vpone the saxt day of July, Im.V^c.

¹ See Jul. 30, Aug. 9, and Nov. 5, 1605.

fourfour nyne zeiris: And of the treffonabill burning to deid, at that same tyme, within the said Place, of vmq^{le} Alexander Bailzie of Littilgill, Rachael, dochter to Matthow Bailzie, now of Littilgill, Andro Achiefoun and Katharene Forrest, ordiner fervandis to the said vmq^{le} Alexander, within the said place. ITEM, ffor airt and pairt of the Slauchter of the said vmq^{le} Robert Broun in Coulter; committit be the saidis Thomas and Vmphra, in the moneth of Junij, the yeir of God I^m.V^c. fourfcoir faxtene yeiris, vpone the Grene of Coulter, with schottis of hagbuttis and pistolettis. ITEM, ffor airt and pairt of the steilling of the hors, pryce of the peice ane hundreth pundis; with ane grit ox, pryce thairof fyftie merkis, pertening to Williame Broun in Coulter; committit be him and the said Vmphra, his sone, at Mertines, or thairby, in the yeir of God I^m.V^c. fourfcoir faxtene yeiris. ITEM, ffor airt and pairt of the Slauchter of Johnne Tuedie of Southwoid, committit be the said Thomas and Vmphra his sone, vpone Harlaw-mure, besyde St Ninianes Kirk, in the moneth of July, I^m.Vj^c. yeiris. ITEM, ffor airt and pairt of the Steilling of faxtene scheip furth of the landis of Scornefald, pertening to Johnnestoun, put be him vpone the saidis landis in girseing; committit be the said Thomas and Vmphra his sone, in the yeir of God I^m.Vj^c. yeiris. ITEM, ffor airt and pairt of the thiftious Steilling, at the leift refetting of faxtene stowin scheip, stowin at his command be vmq^{le} James Thomefoun his man, in the moneth of November, in the yeir of God I^m.V^c.lxxxxix yeiris. AND ffor Cowmoun Thift, and Cowmoun Resfet of Thift, fra land to land, fra cuntrie to cuntrie, baith of auld and new; preceeding the nynt day of Majj, I^m.Vj^c. and fyve yeiris.

DITTAY against Vmphra Jardane.

INDYTIT, accuset and persewit of the crymes perticulerlie aboue writtin: And als, accuset and persewit of the crymes *respectiue* and perticulerlie following, viz. FOR airt and pairt of the Steilling of ellevin nolt, price of the peice ten pundis, pertening to Johnne Farquhair in Cavill, furth of his duelling hous thairof; committit be the said Vmphra and his complices, in the yeir of God I^m.Vj^c. and tua yeiris. ITEM, for airt and pairt of the Steilling of ane hors and ane meir, price of the peice ane hundreth merkis, fra George Slowane in Knokburne, furth of his duelling hous thairof; committit be the said Vmphra and his complices, vnder silence and clud of nycht, in the moneth of Junij, the yeir of God I^m. fax hundreth and foure yeiris. ITEM, ffor airt and pairt of the taking fra William Craufurd in Silliehoillis, furth of his duelling hous in Silliehoillis, of ane naig, pryce thairof fyftie pundis; committit be him and the said Thomas his father, in the yeir of God I^m. fax hundreth and thre yeiris. ITEM, ffor airt and pairt of the thiftious Steilling, be way of maisterfull Thift and Stonth-reif, fra Charles Murray, of tua hors, price of the peice, ane hundreth merkis; togidder with his cloik, fuord, pistolettis, steilbonet, and purse, with threfcoir pundis, being thairin; committit be the said Thomas and Vmphra Jardanes, vpone the Brokin-calfay, betuix Davieschaw and Littilgill, in the yeir of God I^m.V^c fourfcoir sevintene yeiris. ITEM, ffor airt and pairt of the steilling fra Hew Campbell, sone to Hew Campbell in Garallane, furth of his landis of Eistmark;¹ committit be the said Vmphra and his complices, in the 5eir of God I^m.V^c.lxxxxix yeiris.

For the quhilkis crymes *respectiue* aboue writtin, the saidis Thomas and Vmphra Jardanes tuik thamefelfis to our souerane lordis Remissioun, producet be thame, vnder his hienes Grit seill, of the dait the nynt day of May, the yeir of God I^m. fax hundreth and fyve yeiris. Quhilk Remissioun the Justice admittit.

LYK AS, the said *Thomas Jardane*, elder of Birnok, being indytit and accuset,

FOR putting handis in vmq^{le} James Thomefoun, his man, binding of him hand and fute; and at his awin hand, bot² ordour of Law or ony Commissioun gevin to him, drownet and execute to daith the

¹ The articles stolen are not detailed in the Record. ² Without.

saïd vmq^{le} James Thomefoun, his man, in Robertoun burne; and sa, is and was airt and pairt of his daith and slauchter; committit in the moneth of November, the yeir of God I^m. fyve hundreth fourfcoir nyntene yeiris. ITEM, ffor Cowmone Thift, Cowmone Reffet of Thift, outputing and inputting of Thift, fra land to land, fra cuntrie to cuntrie, at dyuerse tymes, sen the moneth of May, in the yeir of God I^m. sax hundreth and fyve yeiris; quhilk is the dait of his Remiffioun. AND SICLYK, the saïd *Vmphra Jardane* his sone, being indyttit and accuset, ffor airt and pairt of Steilling of ane broun horfe of four yeir auld, price ane hundreth merkis, fra Andro Slowane in Laneheid, furth of the landis of Watterheid in Cumnok, in the moneth of Junij, I^m.Vj^c. and fyve yeiris. ITEM, ffor airt and pairt of the Steilling fra Williame Raukene of ane gray hors, pryce thair of I^c li. furth of the landis of Boigcorroche; committit in the moneth of Junij, I^m.Vj^c. and fyve yeiris. ITEM, ffor airt and pairt of the Steilling of fourfcoir hogis,¹ price of the peice fyftie schillingis, furthe of the landis of Woulferuikis, within the barronie of Douglas, pertening to the Erle of Angus and his tennentis; committit in the moneth of October, the yeir of God I^m.Vj. and sax yeiris. ITEM, ffor airt and pairt of the Slauchter of vmq^{le} Williame Campbell of Walwoid; committit be him and his complices, at the Kirk of Douglas, be hurting him, deidlie, in his heid and vtheris partis of his body, in the moneth of October, or thairby, I^m.Vc. and foure yeiris; at the leist, sen the yeir of God I^m. fyve hundreth fourfcoir sevintene yeiris; quhair of he depairtit this lyfe, in the moneth of I^m.Vj^c. and sax yeiris thairefter. ITEM, ffor Cowmone Thift and Reffet of Thift, &c. sen the dait of his saïd Remiffioun, viz. the nynt day of Majj, I^m.Vj^c. and fyve yeiris.

THE pannell and thair preloquuntouris declarit thay will nocht feik delay, nochtwithstanding thay ar nocht summond, and hes nocht gottin ane copie. Quhairvpoun my Lord Aduocat askit instrumentis.—The pannell askit instrumentis, that na partie competent to perfew thame, bot the personis aboue writtin.

The Advocat allegit that Mr Johnne Russell can nocht be hard to compeir and defend, becaus the pannell ar att the horne.—It is anfuert, that *defensio est juris naturalis*; and thay haif obtenit ane delyuerance of Relaxatioun (from the horn) —The Aduocat in the contrar, becaus he producet Hoirning aganis the pannell. —The Aduocat passis fra the allegiance.

The pannell allegis, that na proces can be led aganis thame, for ony cryme committit be thame, preceding the moneth of Majj Vj^c. and fyve; becaus his Maiestie hes grantit thame ane Remiffioun, for all crymes committit be thame before the saïd moneth. Quhilk Remiffioun thay produceit; and tuik instrumentis thairvpoun; and this but² preiudice of thair defence aganis ony vther cryme.—Allegis the Aduocat, this Remiffioun can nocht satisfie for the Slauchter of vmq^{le} Johnne Tuedie; becaus it is gewin only to Alexander Jarden; nixt, becaus it is grantit vpoun ane fals cause, viz. vpoun satisfioun of partie, quhilk is nocht; for the mother, or brother, and the sifteris of Johnne Tuedie ar nocht satisfeit. —The Aduocat askis instrumentis, that the pannell vsis the Remiffioun for the haill crymes contenit in the Dittay, preceding the dait of the Remiffioun.

It is allegeit, that the Remiffioun is null, be Act of Parliament, quhair the pairtie is nocht satisfeit; and na cryme contenit in the Remiffioun is satisfeit.—

¹ Young sheep of a year old, or unshorn.

² Without.

The Pannell anfuweris, that the Remiffioun standis ; and thay ar content to find Cautioun to fatisfie the pairtie.

Allegis the Aduocat, the Remiffioun can nocht be extendit to Williame Campbell ; becaus it is provydit, that itt fould nocht extend to ony Slauchter, bot thais quhilk ar committit fen the fourfcoir aughtene yeiris.¹—The Aduocat askis instrumentis, that Mr Johnne Ruffell grantis the Slauchter ; bot it wes committit befor the fourfcoir and aughtene yeiris.—It is allegeit, that the Slauchter of Williame Campbell can nocht be putt to ane Affyse ; becaus thay offer to prove that he levit tua yeiris eftir his hurting ; and that he fall offer to be verifeit to the Affyse, that he reparit to kirk and mercat, be the fpace of twa yeiris eftir his hurting.

The quhilk day, Sir Alexander Jardene of Apilgirth, togidder with Thomas Jarden of Birnok, and Vmphyry Jarden becom fouerteis, coniunctlie and feuerallie, to fatisfie all parteis for the quhilkis the faidis Thomas and Vmphyry vft Remiffioun, as Law will.

The Aduocat takis instrumentis of the fweiring of that poynt of Dittay, anent the Slauchter of Williame Campbell ; fuorne be Williame Campbell his fone.

QUHILKIS feuerall crymes, aboue writtin, being nawayis comprehendit vnder the faid Remiffioun, and haillilie² denyit be the faid Thomas and Vmphra to be of verritie, the Iuftice referrit to the knowlege of ane Affyse of the perfones following.

ASSISA.³

James Tailziefeir, in Strangcleuch, ⁴	Williame McCall of Boighous,	Mairtene Mure, in Boigend,
Williame Wallace of Wallacetoun,	George Dunbar of Knokfchyn-	Williame Chamlay, in Nethirtoun,
Johnne Broun, in Schaw,	noche,	Mungo Reid of Drumfork,
James Tailziefeir, in Abingtoun,	Anthone Couthird, 3ounger, in	Johnne Robfoun, in Craigheid,
James Wallace of Boigheid,	Nethirtoun,	Johnne Wilfoun, in Crnik,
Jo. Makmorrane, elder of Glaspen,	Williame Craufurd, in Creoeche,	Johnne Thomefoun, in Bankend,
Ja ^s Makmorrane, y ^r of Glaspen,	Dauid Durie of Hielare,	Patrik Wilfoun, in Craig.

The Aduocat askis instrumentis of the fvering of the Affyse ; lykas, the perfewaris and defendaris, *hinc inde*, Proteftis aganis the Affyse for Errour, gif thai follow nocht thair knowlege in this matter.

VERDICT. The Affyse, be the mouth of the faid Dauid Durie of Hiellar, chancellor, in prefens of the Iuftice and Lordis of his Maiefteis Previe Counfall, thair prefent, ffand, pronunceit and declairit, be pluralitie of voittis, the faid *Thomas Jardane elder of Birnok*, to be ffylet, culpable and convict of airt and pairt of the drowning and puting to daith of the faid James Thomefoun, his man, committit be him in maner and at the tyme fpecifeit in his Dittay : AND the faid *Vmphra Jardane* to be ffylet, culpable and convict of airt and pairt of the Slauch-

¹ Since the year 1598.

² Wholly.

³ This Assise, *nineteen* in number, is one of the largest which the Editor recollects to have observed as being sworn and officiating on any Criminal Trial, in Scotland.

⁴ ' Strankla,' in another place.

ter of vmq^{le} Williame Campbell of Walwoid, committit fen the yeir of God I^m.V^c. fourfcoir fevintene yeiris ; in maner contenit in his Dittay : AND ficylk, ffand, pronuncet and declairit the faidis Thomas and Vmphra, to be Clene, Innocent and Acquitt of the remanent crymes contenit in the faid Dittay, nocht comprehendit vnder the faid Remiffioun, viz. of the Steilling of the faid Andro Slowanes broun hors, of the quhyte-gray hors pertening to Williame Rankene, and of the steilling of the faidis fourfcoir hogis ; in maner, and at the tyme contenit in the faid Dittay : And ficylk, of Communone Thift and Cowmone Reffet of Thift, &c. fen the faid nynt day of May, I^m.Vj^c. and ffyve yeiris.

SENTENCE. For the quhilkis tua Slauchteris, contenit in thair convictioun aboue fpecifiet, committit be thame, as faid is, the Juftice, be the mouth of Johnne Laufone, dempfter of Court, decernit and ordanit the faidis Thomas and Vmphra to be tane to the mercat croce of Edinburghe, and thair heidis to be ftrukin frome thair bodeyis ; and thair haill guidis, geir, inficht and pleniffing, to be efcheit and inbrocht to his Maiefteis ufe, as culpable and convict of the tua Slauchteris aboue fpecifeit. Quhilk was pronuncet for dome.

Hamesucken—Remembrance.

Sep. 14.—ANDRO HENDERSONE, fone of vmq^{le} Johnne Henderfoun, merchand burges of Edinburghe.

Dilaitit, accufet and perfewit of the crymes contenit in the DITTAY vnderwrittin.

FORSAMEKILL, as ye, haifing confauet ane deidlie feid, rancour and malice aganis Williame and Adame Montgomeris, tua honest men, merchandis burgeffis of Edinburghe, for concurring, affifting, mantening and fortifeing of David Johnneftoun, ane of the Bailleis of the faid bur^t, in the executioun of his office, in the taking and apprehending of yow at your motheris hous, about ten oulkis¹ fyne or thairby, for the crewall and fchamefull hurting and wounding of . . . Harper, than your motheris fervand, in the heid, to the grit effufioun of hir bluid ; ye, in revenge of the Law, haveing ferchet and focht the faid Williame Montgomerie dyuerfe tymes at the yet² of his duelling hous, be way of Hamesuckin for his flauchter, leitlie, vpoun the fecund day of September instant, being bodin in feir of weir,³ with ane grit battoun and ane fuord, awaittit the faidis Williame and Adame Montgomeris in Libbertones-wynd-heid, at the yet of the faid Williames duelling hous thair, as thay war, in fober and quyett maner for the tyme, cumand frome thair mercheand-buthes, a littell afoir aucht houres at evin, hame, towardis the faid Williames duelling hous, dreidand na evill, harme, iniurie, or perfute of ony perfones, within sic ane reformat toun, bot to haif levit vnder Godis peax and our fouerane lordis : And thair ye, vnder nycht, fet vpone thame, and crewallie invalidit thame for thair Slauchter, frak at the faid Adame with the faid battoun, preiffing to haif ftrukin him thairwith in the heid, and to haif fellit him : Quhilk ye had nocht failzeit to haif done, war nocht, be the Providence of God, he drew his dager, for defence of his lyfe ; vpone the quhilk⁴ ye brak the faid battoun. And finding yow difapoyntit of your firft intentioun, quhilk was to haif ftruckin the faid Adame in the heid with ane battoun, ye thaireftir drew your fuord, and of new fett vpone him, and crewallie invalidit him for his flauchter, hurt and woundit him thairwith in the left hand, to the effufioun of his bluid in grit quantitie ; and

¹ Weeks.

² Gate.

³ Arrayed or provided in warlike manner.

⁴ Upon which dagger.

hes demembrit him of thre fingaris of his left hand ; committit be way of Hamefuckin and brigancie, vnder silence and clud of nycht, vpon set purpos, prouisioun, precogitat malice and foirthocht fellonie : And ye ar airt and pairt of the saidis crymes, committit in maner foirsaid : In hie and manifest contemptioun of our soverane lordis authoritie and lawis, in evill exampill of vtheris to commit the lyk barbarus, crewall and inciull crymes and offences, within ane reformat citie, gif ye be nocht rigoroullie pwneist thairfore, be ane seuir and examplarie pwneishment, conforme to the lawis and practik of this realme. To the taikin,¹ ye, estir the committing of the said crewall fact, fled vp the Hie-gait to the Over-bow,² quhair ye was apprehendit with the drawin bludie fuord in your hand, and was committit to waird, within the Tolbuth of Edinburgh, quhairin ye haif remanit, in the irnes, quhill now that ye ar brocht to the bar, to be tryit and pwneischet as said is.

PERSEWARIS, Adame Montgomerie, Williame and Alex^r, his brothers, Sir Thomas Hammiltoun, &c.

PRELOCUTORIS in defence, Mr Johnne Ruffell, Mr Oliver Colt, younger, Mr James Halyday.

My Lord Aduocat passis fra that poynt of Dittay of Mutilatioun, *pro loco et tempore* ; and infistis vpon the Dismembring.

It is allegit, that the dismembring of ane finger, tua, or thre, aucht not to be put to the tryell of ane Assyse, *quia non est crimen ; et digitus non est membrum, sed tantum pars membri* ; and for verificatioune thair of, allegit the lawis and textis of Julius Clarus, and the Ciuill Law.—It is ansuerit, aucht to be repellit. in respect of the Dittay and daylie practik of this judgement.

THE Justice findis proces ; and repellis the allegiance.

The pannell acceptis the Dittay ; and takis instrumentis of the conclusioun of the Dittay, beirand puneishment conforme to the lawis of this realme.—It is allegit, that gif ony dismembring was done be the pannell, (nocht granting the samyn,) that the samyn was done in his awin defence ; in sa far as thair was tua persewaris of him, viz. Adame Montgomerie and his brother, the ane haifing ane battoun, and the vther ane dager ; and thairfoir, the fact lybellit, done be the pannell, was lauchfull.—It is ansuerit be the Aduocat, aucht to be repellit, in respect of the Dittay.—The pannell defyres the persewer, present at the bar, to geve his aithe, quhidder the pannell did the hurt to him in the pannellis defence ; or gif the pannell persewit him first ; quhairupoun the Aduocat askit (instrumentis.)

Adame Montgomerie, present, vpon his grit ayth, declairit, that Andro Henderfoun was the first setter vpon him, in his brotheris close, at his ganging hame to his hous ; quhair, with ane battoun, he invaidit the deponer, of purpos to haif fellit him thairwiith ; quhilk the deponer foirfeing,³ drew his dager and kepit⁴ the straik of his battoun thairupoun : And thairupoun and thaireftir, Andro Henderfoun steppit bak and drew his fuord ; at quhilk tyme, the deponer tuik vp Henderfones cloik, quhilk he cuist about his left airme and left hand, of purpose to gaird himself thairwiith : And that the said Andro thaireftir, with his

¹ In proof or testimony.

² Up the High Street to the Over or Upper Bow, now called the West Bow.

³ Perceiving, *foreseeing*.

⁴ Caught the blow ; *keppit* the stroke.

fuord, gaif him ane ftraik vpon his left hand, and throw the cloik, tua ply,¹ cuttit the deponer, and ftrak fra him his thre fingeris.

The Aduocat takis instrumentis of the fweiring of the Dittay be the perfewar, in prefens of the Affyse; and protestis for Wilfull Errour, gif thay acquit.—Mr Johne Russell producet ane tiket of fax perfones, as witneffis, quha can declair to the Affyse, that the pannell was perfewit be the tua brether, the tyme contenit in the Dittay; and that the hurt was gevin to Adame, be the pannell, in his awin defence; and thairupoune askit instrumentis.—The Aduocat anfuerit, that thair is na necessitie to the Affyse to reffauie ony witneffis, becaus thai ar witneffis thame felfis,² and duellis within this burgh, and vnderftandis that this fact was committit be the pannell, in maner contenit in the Dittay; and protestis for Wilfull Errour, gif the Affyse acquit.

VERDICT. The Affyse, be the mouth of Dauid Fergushill, mercheand, Proveist of the burcht of Air, chancellor, all in ane voce, fand, pronunceit and declairit the said Andro to be Giltie, culpable and convict of the difmembring of the said Adame Montgomerie of thre fingeris of his left hand; committit at the tyme contenit in the Dittay, vpon fet purpois, prouifoun and foirthocht fellony.—Efter publicatioun of the quhilk Conviction, THE JUSTICE ordanit the said Andro to be tane bak agane be the Magistratis of Edinburgh to his waird, within thair tolbuith thairof; thairin to remane in fure keiping, in the irnes, as ane convict perfone, quhill he war forder advyfet anent his dome and pwneifchment.

(1610, April 18.)—THE pannel was prefented at the bar, by ‘Robert Bannatyne, ane of the Bailleis of Edinburgh,’ by virtue of an Act of the Privy Council, dated at Edinburgh, April 12, 1610; in confequence of his Majesty, ‘in his princelie wifdome,’ having fignified to them his Will.

SENTENCE. FOR obedience of the quhilk act and ordinance, the Justice, be the mouthe of Johnne Laufoun, dempfter of Court, decernit and ordanit the said Andro Henderfoun to be Baneift our fouerane lordis haill dominionis, during his lyftyme; and nocht to returne agane within the famyn, vnder the pane of deid: And thaireftir, ordanit the said Andro to be tane bak agane to his waird, be the Magistrattis of Edinburgh, to the tolbuith of the said burgh, thairin to remane with the remanent wairdouris, quhill he be reddie to imbarque; and that ordour be tane for convoy and tranfpoirt of him to his fchip.

¹ Two folds thick. Lat. *plica*.

² This is a strong illustration of the anomalous office of an Assisor or Juryman, in early times. From the peculiar mode in which he was chosen, from among those of the pannel’s peers, who were resident nearest the spot, and knew the common report of the country, he was himself presumed to be a witness; and, in many instances, *de facto*, was a witness of the whole circumstances of the case;—but it is obvious that this very circumstance must have frequently proved a real disqualification to the honest discharge of so important a duty. For the history of the ancient modes of choosing Assises, &c. see the valuable Commentaries of *Baron Hume*, *Burnet* on the Criminal Law, *MacLaurin’s Trials*, &c.

[*Mr Alexander Colvill, Justice-Depute.*]
Slaughter of Alexander Lord Spynie.

[SIR ALEXANDER LINDSAY, LORD SPYNIE, whose life unhappily fell an untimely sacrifice to one of those deadly feuds, which the demon of domestic strife then too frequently, indeed almost universally, stirred up in the breasts of our Scottish Nobility and Gentry, of all ages and ranks, urging them to the commission of the most frightful excesses and crimes, and whose wrath and rancour, even the nearest ties of relationship could not appease,—was the fourth son of David, *ninth* Earl of Crawford. Having accompanied King James VI. to Denmark, in his matrimonial expedition, and enjoying his Majesty's intimate personal friendship, the King, on his return to Scotland, in fulfilment of a promise then made, erected the lordship of Spynie, Kinnedder, Raffart, and other lands in the shires of Elgin, Banff, and Inverness, formerly pertaining to the See of Moray, into a free Barony, and conferred upon him (then designed 'Vice Chalmerlane to oure fourane lord') the title of Baron of Spynie,¹ May 6, 1590. This Letter is so extremely characteristic, that the Editor needs no apology for transferring it from the original to this Collection.²

'SANDIE,

'QUHILL³ youre goode happe furneis me with sum better occasion to recompence youre honest and faithfull seruice, utterid be your diligence, and cairfull attendance upon me, speciallie at this tyme, lett this assure, in the inuiolabill worde of your awin Prince and maister, that quhen God randeris me in Skotlande, I fall irreuocablie, and with consent of Parliament,⁴ erect you the temporalitie of Murraie in a temporall Lordshipp, with all honouris thairto appartaining: and lett this serue for cure of youre prefont diseafe. FROM the Castell of Croneburg, quhaire we ar drinking and dryuing our, in the aulde maner.

J. R.'

He also obtained another Charter, creating him a Peer of Parliament, Apr. 17, 1593.⁵ This distinguished Nobleman married Jean, *eldest* daughter of John, *tenth* Lord Glamis, she being also the relict of Robert, Master of Morton, and of Archibald, Earl of Angus. It is probable that this marriage took place on the suggestion, or through the influence, of the King, who thus notices the Countess in one of his Letters;—'Mind *Jean Lyon*, for her auld tout will make you a new horn!'

In order to arrive at the facts relating to this feud, a few quotations shall be made from contemporary sources, the only authentic and satisfactory mode of treating such a subject in a Work of this description. We are informed by *Birrel* and by *Sir James Balfour*, that previous to the fatal skirmish, when Lord Spynie was slain, there had been a similar rencontre, also on the streets of Edinburgh, on the 17th day of June, the same year; which the authorities and the citizens had been wholly unable to put down. That affair is thus related, in the expressive language of the day.

'THE 17 of Junij, (1605,) ane Combat or tulzie foughten at the Salt-tron of Edr, betuix the *Laird of Edzle*, *young*, and hes complices, and the *young Laird of Pittarrow*, *Wifchart*. The faucht lastit frae 9 hours at night till 11 at night, twa hours! Thair wer fundrie hurt one both fydes, and ane *Guthrie* slaine, which was *Pitarrow's* man; ane verie prettie young man. The 18 day they wer acufit befor the Counsell, and wardit.'⁶ 'THE 17 day of Junij, a combat betuix the *Lairdes of Edzell* and *Pittarrow*, one the Heighe Streite of Edinbrughe! The fight lasted from 9 in the night till almost 2 in the morning, befor they wer separted! In this fight diners wer hurte; and one only killed. They wer sumond to compeir befor the Lordes of his Maiesteis Priuey Counsaill, and wer bothe of them committed to prisone.'⁷ Sir Thomas Hamilton, then Lord Advocate, preserves the following interesting notices in his Minutes of the proceedings of the Privy Council,⁸ which tend to throw much

¹ *Reg. Mag. Sig. Lib.* xxxvii, No. 415.

² It has been published before. See *Dalyell's Fragments*, App. 83. *Wood's Peerage*, II. 517. And a *fac-simile* of the Letter has been given by Mr J. T. Gibson Craig, in his Contribution to the Bannatyne Club, being 'Papers relative to the Marriage of King James the Sixth.'

³ *Acta Parl.* III. 650.

⁴ *Reg. Mag. Sig. Lib.* cxxxix, No. 140. *Robertson's Proceedings*, p. 426.

⁵ *Birrel's Diary*.

⁶ *Balfour's Annals*, II. 7.

⁷ *Lord Hadington's MSS.* Adv. Library, A. 4. 22.

⁸ *Until*.

light on the matter. ‘EFTIR the Combat in Edr betuix *Young Pittarro* and *Mr Alexr Lindsay*,¹ vpoun the xvij day of Junij, vpone the morne thairefter, *Auld Pittarro* and his sone, and *my lord Chancellaris* message, be his servand, is send to thame to keip pair houffis, and certane pair bairnes thairin; and that thair not obeying and doing pairof gif occasione of the skaithe and slauchter that followed: Thairfoir thay wer commandit to enter in the Castell of Edr; and furthe pairof, *Pittarro elder* and *younger* to the Blakness, and *Edzell* to Dunbartane. That same day, or the next day thairefter, vpoun the *Laird of Edzellis* Supplicationune, beand, that he wes informed, that the Lordis, haveing respect to the Slauchter of *William Guthrie*, seruitour to *Pittarro*, had commandit him to waird, albeit he vnderstude pe said *Guthrie* to have reffaued na woundis, bot to have been smored² in the throng; at his desyre, thay send for *David Pringall*, pat had handlit him, and examined him vpone his woundis, and quhidder thay war deidlie or not? And also directed *David Bailzie* and twa vther chirurgiens to vesie the corps, and hand pair report; quhilk monie thocht ane strange and extraordinar forme.’

The occasion of this preliminary quarrel probably arose out of some family difference, which, it would appear, the heads of the respective Houses could not prevent. SIR DAVID LINDSAY, YOUNGER of Edzell and of Glenesk, married Margaret Wishart, who, likely, was sister of young Pittarrow.

The cause of the second quarrel, which unfortunately resulted in the death of Lord Spynie, can be more satisfactorily accounted for. ‘*DAVID LINDSAY, younger of Edyel*, seeking to revenge the slaughter of his Uncle, *Mr Walter Lindsey*, whom *David, Maister of Crawford*, had killed, as he lay in wait of the said *Maister*, (who was then, by the decease of his father, succeeded in the Earldom,) through a pitiful mistake, did invade *Alexander Lord Spynie*, and killed him instead of the other! The Nobleman’s death was much regrated, for the many good parts he had, and the hopes his friends conceived, that he should have raised again that noble and ancient *Houfe of Crawford* to the former splendor and dignity; all which perished with him. He that was in place, and escaped the peril, being a base unworthy prodigal, and the undoer of all, that, by the virtue of his ancestors, had been long kept together.’³—‘THE 5 day of July, in rewendge of the Slachter of *Sir Walter Lindsey, the young Laird of Egell* settis for the *Maister of Crawford* in the hie toune of Edinbrughe; the Lord of Spynie being with the Maister, quha was trauelland betuix thame, to haue had thame agreitt, the *Maister* being his broder-sone, and *Eagill* his sifter-sone; and being bayth *Lindsays*, had grit reffone to mowe (him) to reweill to haue them at concord;⁴ bot this perfruit being betuix nyne and ten houris at nycht, thay culd nocht knaw ane be ane wther; *Egell* being the number of aucht men, in geir; and thair being nane with the *Maister* bot *my Lord of Spynie* and the *Laird of Drumlaynerig*,⁵ quha being all hurt with schottis and straikis, the *Maister* hurt and *my Lord of Spynie* with mony straikis, thay had gottin ane *Drumeldry* schott throw the airme; *Eagell* passis his wayis in faiftye, and his folkis with him. The Lord of Spynie depairtit off the said hurttis, the 16 day of Julij; bot the *Maister* recowerit his healtbe, bot with grit los of his blude.’⁶

This unhappy Feud was kept alive for many years, and was productive of mutual misery to every member of these families. The diet was not finally deserted against the Earl (formerly the Master) of Crawford, until Jun. 9, 1613.⁶

Before closing this Notice, it is proper to state, that SIR DAVID LINDSAY, ELDER, was called *Lord Edzell*, from the circumstance of his being one of the Ordinary Lords of Session, having succeeded his brother, Sir John Lindsay of Balcarras, the Parson of Menmure (Lord Menmure), on the appoint-

¹ This Notice is preceded, in *Lord Hadington’s Minutes*, by the following remark. ‘EDZELL and *Pittarro* committed to waird; becaus thair neglecting to conteane thair sones in thair houses (as thay war commandit be *my Lord Chancellare*) was the occasion of tumult and slaughter. At desyre of *my Lord of Edzell*, the deid corpses of *William Guthrie* was visited be the *Bailzeis of Edinburgh* and the Chyrurgians, that saw him examined, gif his woundis wer mortall, and gif he died of thame?’ ² Smothered; suffocated. ³ *Spotswood’s Hist.* p. 504. ⁴ Had

great reason to move him to rule (or exercise his authority) to reconcile them. ⁵ Sir James Douglas of Drumlanrig, ancestor of the Marquis of Queensberry, a powerful baron, who was most active in suppressing disturbances on the Borders. ⁶ *Anon. Hist. Scot.* MS. Adv. Library, A. 4. 35. ⁷ See this Collection under that date.

ment of that distinguished person to the office of Secretary of State, Feb. 23, 1597.¹ He was the eldest son and heir of David, *eighth* Earl of Crawford; to which title Lord Edzell would have succeeded, had not his father generously conveyed back the title to David *ninth* Earl of Crawford, the grandson of David the *seventh* Earl, who had disinherited his sons for their 'unnatural barbarity' to him.² In order to cement that transaction, and to preserve the most intimate terms with the House of Crawford, Sir David married Lady Helen Lindsay, the daughter of the person who had thus obtained the Earldom on his father's voluntary resignation, viz. David *ninth* Earl of Crawford, who had been a steady adherent to the interests of Mary Queen of Scots; and who married Margaret, daughter of Cardinal Beaton, in April 1546. However piously this respectable man was inclined to preserve the most friendly terms, the deadliest passions seem to have rankled in the bosoms of his son, the Young Laird, and of David, Master of Crawford, the only son of David the *tenth* Earl,³ who had succeeded his father previous to Dec. 11, 1581,⁴ and died, Nov. 22, 1607. At the date of this Trial, therefore, THE EARL OF CRAWFORD, alluded to in these proceedings, and in the Letters, &c., is the *eleventh* Earl, who, at the time of the skirmish on the streets of Edinburgh, was *Master of Crawford*. 'THE YOUNG LAIRD OF EDZELL' was Sir David Lindsay, younger of Edzell, and of Glenesk, and as has already been remarked, married Margaret Wishart, one of the family of Pittarrow. His father having been interdicted from giving him harbour, in any of his houses, 'he built for himself a small Castle called Auchmull, in the parish of Edzell, and another, called Innermusk, in Lochlie, as lurking holes, while he was forced to skulk several years, for the murder of Lord Spynie.'⁵

The Appendix of Original Papers which follows, contains all the additional information on the subject of this deadly Fend, which the Editor can at present obtain.]

Sep. 19.—SIR DAVID LYNDSEY of Edzell, kny^t, (LORD EDZELL,) ane
of the Senatouris of our fouerane lordis College of Justice,
and Mr Alexander Lyndsay of Canterland, his sone.

Dilaitit for the Slauchter of vniq^{le} Alexander Lord Spynie.⁶

Compeirit and producet ane Act of the Secreit Counfall, extract furth of the buikis thair of, be James Prymrois, ordiner clerk, of the dait the tent of Auguft lastbypast, beirand, that this fix of September instant was appointit to David Erle of Craufurd, of his awin consent, for him self, and takand the burding on him for the remanent perfonas contenit in the Act, to perfew the said Sir David and his said sone, for the foresaid allegit Slauchtir. Accoirding to the quhilk Act, and tennour thair of, the said Sir David and Mr Alexander his sone offeris thame reddie to abyde tryell for the said allegit Slauchter, quhairof thai ar alto-gidder innocent. And proteftis, becaus na partie compeiris to perfew, that thai never be hard heireftir to infist in the perfute for the said allegit Slauchter; and thairupounne askit instrumentis.

¹ Wood's Peerage, I. 165; but according to Lord Hailes' Catalogue, Feb. 23, 1598. He was afterwards one of the Commissioners of Treasury and Exchequer, called from their number the *Octurians*, Jan. 5, 1595; and was in Mar. 1595 appointed Lord Privy Seal; and, likewise, was Chancellor of the University of St Andrews, &c.

² Peerage, *ibid.* and I. 379.

³ Who married Lady Grizel Stewart, eldest daughter of John *fourth* Earl of Atholl.

⁴ Wood's Peerage, I. 380. Reg. Mag. Sig. xxxv. 467-769, &c.

⁵ Statistical Account of Scotland, X. 102, which asserts that 'THE CASTLE OF EDZELL' is one of the most magnificent ruins any where to be met with. It consists of two stately Towers, evidently in different styles, and built at different periods. These are connected by an extensive wall; and large wings went backwards from the Towers. Tradition says that the square Tower, the most ancient, was built and possessed by the Family of *Stirling*, from whom it descended to Lindsay of Glenesk.

⁶ See Jul. 8, 1607, and Jun. 2 and 9, 1613. It appears that he died of his wounds, July 16, 1615. See the foregoing Notice prefixed to this Case.

Compeirit Gilbert Rynd, feruitour for the tyme to vmq^{le} Alexander Lord Spynie, and in name and behalf of the Lord Spyneis bairnes, protestis, that quhatsumevir be done in this Judgement and Justice Court this day, preindge nocht the perfute to be movet at the instance of the said vmq^{le} Lord of Spyneis bairnis, for thair fatheris Slauchter : And thairupoun askit instrumentis.

APPENDIX OF DOCUMENTS illustrative of the preceding Case.

I. LETTER, *the Laird of Edzell to the King*.¹

MAIST SACRED SOUERANE,

IT MAY pleise your Matie albeit I hawe stayit hier in Ed^r ane yeir and three moonthifs bygane, craving ewer to be tryit of the onhappie Slachter of my winq^{ll} LORD OF SPYNIE, quhairof I protest befoir God and your M^{te} I am maist innocent, *my Lord of Crawford*² will nather call me thairfoir, nor staye, baithe privatlye and pwbliklye, yea in face of yo^r M^{ties} ho^{ll} ³ Priwe Counsell, to caluminat me : Quhairfoir, seing my modesté moowife⁴ nocht *my Lord of Crawford* rightlye to consider my innocence, I maist humilye pray your M^{te} to direct yo^r Thesaurar and Advocatt to call and pwt me to ane honest and onfusppect Triall ; and being tryit innocent, that I maye hawe suretye to liewe in peace, to serwe y^r M^{te}. I hawe swfferit manye injureife, specialye fyiwe of my servitouris schott with pistoillis and hwrt, yit hes nocht complenit ;—my self also, during the space foirsaid, nocht wairdit onlye, bot banishit from my verteu ; and yit *my Lord of Crawford* his insolence no^t moowit nor stayit from feiking of my wraik. Praying yo^r M^{te} to consider and to cause ordour be pwt to the premissis, I pray God to grant y^r M^{te} ane lang and prosperus reigne, and to bliss yo^r Royell progenie. Sa kissing humilye y^r handis, I rest ewer,

ED^r, 1608. 16. Aug. Yo^r Sacred M^{teis} maist humill and obedient subiect and servitour,

To HIS MAIST SACRED M^{TE}.

EDZELL.

II. EXTRACT from LETTER, *the Privy Council of Scotland* ' To THE KING his most sacred and excellent Matie, Mar. 28, 1609.'⁵

THAIR wes a Petitioun presentit vnto ws, in name of THE LAIRD OF EDYELL, complaining that THE ERL OF CRAUFURDE, vnder the pretext and cullour of a Commissioun granted be your Maiestie to some of his domestiquis and seruandis, for perfute of the Criminallis for THE LORD OF SPYNEIS SLAUCHTER, intended to persew and assedge his HOUSE OF EDYELL, wherein his mouablis and euidentis⁶ ar, and his ludgeing in this burgh whair he presentlie duellis ; and sua, vnder the pretense of Law, and of your Maiesteis auctoritie, to execute his privat revenge aganis him ; and thairfoir, he craved, that this Commissioun, and the executioun thairof, aganis him and his Houffis, myght be suspendit and dischargeit. We could not judge vpoun the tennour and natour of this Commissioun, becaus it wes never shawne nor presentit in Counsaill, and, as we ar informed, it is nouthir registrat nor signett ; and we wold not presume nor tak vpoun ws to discharge your Maiesteis Commissioun, without your heynes awne allowance ; alwayes,⁷ becaus Edyell hes found caution not to resset thir hornaris in his saidis Houffis, vnder the pane of ten thousand merkis, we haif suspendit the executioun of the said Commissioun aganis the saidis tua Houffis, allanarlie,⁸ vntill the tent day of Aprile nixttocome, that in the meantyme we may know your Maiesteis will and pleasour thairanent, and in all vtheris Commissionis of the lyk nature, not presentit nor showne in Counsaill.

¹ *Denmylne MSS.* Adv. Library.

² David eleventh Earl of Crawford, who, at the date of the rencontre at which Lord Spynie was killed, was the *Master of Crawford*.

³ Honourable.

⁴ Moves.

⁵ *Denmylne MSS.* Adv. Library. The Letter, which is very long, craves instructions on a great variety of subjects.

⁶ Title-deeds of his property.

⁷ Nevertheless.

⁸ Only.

III. LETTER, the Laird of Edzell to the King.¹

MAIST SACRED SOVERANE,

IT MAY please your Maieſte, Being advertest that THE ERLL OF CRAWFWRD hes sent exprefs to your hienes of that certane Lettres as written be me to my sone, and recoverit be him within the Howſe of Auchinwll, quhair my sone was wont to dwell; quhilkis informis, it was my will and command to slaye the wmq^{ll} *Lard of Spynie*, and ſa, plotter and contriver of that unhappye and wylld ſlauchter; thinkand thairbye to avert your Maieſtes woontit ſawor from me, and to diſgrace me at the hands of all honeſt men; I hawe choſene and preſumit to tak the hardiment humblye to pray your hienes nocht to giwe credit to anye cōpye of anye Lettre cōming from the handis of my enemyis, wnto the tyme the principall be tryit² to be wrettin, ſubſcriwit, or directit be my ſelf; for I proteſt, in preſence (of) God, I newer had anye ſick innaturall and ongodlie interpryſe in my hart, mekle leſs directit the doing thairof. And to mak this mair maniſeſt to all the world, I have inventit³ Improbatiōne, that all liwing may know howe injuſtlye I am vſit be the *Erll of Crawford*, and howe he quha was the beginner of all thir trowblis, be the Murder of my wmq^{ll} brother *Sir Walter*⁴ onder traift, wald nowe eik⁵ craft to his cruelteis; and in place of repentance, be ſals calunnies, wald alſo bereawe me of my ſame and lyiff, albeit I hawe ewer beine, and yit am maift willing to abyed all ordinar tryell of Lawe. Farther, I moſt alſo regrait that the ſaid Erll, being laitlye at Cowrt, hes privelye obtinit ane Commiſſione wnto ane numer of hes rioteris and defenderis, for ſerching of my ſone; and onder colour thairof, hes intentit nocht onlye to ſurpryſe my howſe of Edzell, quhair my haill evidentis, and of vther freindis yit remanis, bot alſo to berawe me of my lyiff within my awin lwdging in Edr. And to the effect ſoirdſaid, wearis daylye piſtollettis and hagbwttis, prohibitit be your Maieſteis Actis, alledging ewer they ar ſeiking Rebellis. For remeid quhairof, and my awin ſecuritie, in reſpect of the reaſonis ſoirdſaidis, ſpecialye, becauſe your Maieſties honourabill Priwe Counſell hes alreadye grantit ane verie ample Commiſſioun, excepting onlye my Howſe of Edzell, within the quhilk I have ſwnd Cautione nocht to recept⁶ my ſone, nor anye of theiſe Rebellis, onder the paine of ten thouſand merkis, *toties quoties*, I will maift humblye praye your Maieſtie to direct ane Warrant to your hienefs Priwe Counſell of this countrie, to ſuſpend the laſt priwatlye obtinit Commiſſione, as your Maieſtie will have me free of that ſchaddowe,⁷ be the quhilk my ondeſerwit enemye crawis⁸ my lyiff and land; for vtherwayis, the Counſell, for the reverence they carye to that Commiſſione ſeygned be your hienefs, will nocht mell⁹ thairwith. Hoping for your Maieſteis woontit protectione, nowe, ſa mekle the rather that I am ſo onkyndlye, onnaturalye, and without deſerwing, trwblit be that Howſe,¹⁰ of the quhilk ewer of ald, nocht onknowin to your Maieſtie, in thair trowblis, I hawe ſa weill meritit vtherwayis. Yf I find nocht ſecurite hier, I wilbe forcit, altho' be ſea, in reſpect of my aige and inhabilitye, vpon my kneife to beg the ſaming¹¹ at your hiechneſs ſelf. Thws, maift humblye kiſſing your hienefs handis, and praying the Eternal lang to preſerwe your Maieſtie and Royell progenie, I reſt ewer,

Your Sacred Maieſteis maift humble and obedient ſubiect and ſerviteur,

ED^r, 1609. Penult. Marth.

EDZELL.

Slaughter of James Lord Corthorwald.

[THE following Trial, in addition to the preceding Case of the feuds of the Lindsays, affords another, among the many melancholy instances, of the 'deadly feuds' which unhappily existed in Scotland at

¹ *Denmylne MSS.* Adv. Library. ² Judicially proved. ³ Should be *intentit*; raised. ⁴ Sir Walter Lindsay of Balgavies, who was murdered betwixt Brechin and the Place of Edzell, Oct. 25, 1695. See Jun. 2 and 9, 1613, &c. ⁵ Add; join. ⁶ Resett. ⁷ Pretence; mockery. ⁸ Craves. ⁹ Meddle; interfere. Fr. *meler*. ¹⁰ Viz, the House of Crawford. ¹¹ Same.

this period. The arrogant CAPTAIN JAMES STEWART of *Bothwell-muir*, second son of Andrew Lord Ochiltree, well known as the EARL OF ARRAN, and who had been successively Governor of the Castles of Edinburgh and Stirling, Lord Privy Seal, and Lord Chancellor of Scotland, was, in the year 1596, slain, in revenge for his rigorous procedure against his uncle, at Symontoun, near Douglas, in Lanarkshire, by Sir James Douglas of Parkhead, nephew of the Regent Morton. Archbishop Spotswood thus notices these remarkable events.

‘ A little before these stirrs with the Church, *Captain James Stewart* (who had been sometime Chancellor, and carried the title of *the Earl of Arran*) was killed by *James Douglas of Torthorwald*. This man, after he was put from Court, had lived obscure, in the North parts; and was entertained by the Lady Salton, his sister-in-law. Being in hope to come again by the office of Chancellery, which was yet void, by the death of *Lord Thirlestean*, he came South, and had a long conference with the King, which did greatly encourage him; but till matters might be better prepared, he took purpose to visit his friends in Kyle. Taking his journey by Symington, nigh unto Douglas, he was adviced by his friends in those parts to look to himself, and not ride so openly, because of *Torthorwald*, that lived not far off, whose uncle he had followed (as he spake) to the death. His reply (as he was a man proud and disdainfull) “ that he would not leave his way for him, nor for all the name of Douglas ! ” being overheard by a fellow, and reported to *Torthorwald*, did so inflame him, the old ulcer remaining uncured—as he avouched, “ to have his life, at all hazards ! ” So, getting intelligence that he had taken horse, he made after him, with three of his servants; and overtaking him in a valley called *Catflack*, after he had stricken him from his horse, did kill him without resistance. It is said, that when *Captain James* saw the horsemen following, he asked, “ How they called the piece of ground on which they were ? ” And when he heard the name of it, he commanded the company to ride more quickly—as having gotten a response to beware of such a part ! He was a man full of violence; and, when he was in place of rule, executed it with much cruelty—which was now paid home in the end ! ’¹ *Mr Wood*² relates, that ‘ his head was cut off, and carried on the point of a lance, in a kind of triumph, through the country; and his body was exposed to dogs and swine before it was buried ! ’ In accordance with the usual feelings of those times, dictated by a blind and barbarous revenge, (which was, in those days, considered merely as indicating proper spirit in a man of *gentle blood*,) Sir James was, in his turn, murdered on the streets of Edinburgh !

Two contemporary writers thus briefly state that fact to have occurred, simply, as a matter of course : — ‘ THE fewint of Julij, *James Douglas of Torthorwall* slayne be *William Stewart*, sone of Sir William Stewart, in rewendge of Captane James slaughter.’³— ‘ The 14 day of Julij, this yeire, *James Douglas of Torthorwall* was killed, one the Heighe streit of Edinbrughe, betuix 6 and 7 houres in the morninge, by William Steuart, sone to Sir William Steuarte; quho escaped.’⁴— ‘ The 18 day of this fame mounth (May, 1613,) the Lord Ochiltreie solemlie, by his grate othe, purged himselfe (in presence of the Lordis of his Maties Priuey Counsaill,) in being airt or pairt, ore aney wayes accefforey to the Murthour of the Lord Torthorell’s father; and so thay war reconceilled by the Lordes, hartily chapen bandes, and mutually embracing one ane another.’⁵

A very interesting LETTER from the Privy Council to the King, taken from the *Haddington MSS.*, General Register House, is appended. It gives the most authentic account of the matter which can now be procured.]

Sep. 20.—ANDRO LORD STEWART of Vchiltreie, and Andro Stewart, his fervand.

Dilaitit of the Slauchter of vniq^{le} James Lord Torthorell. Compeirit and product ane Act of Secreit Counfall, extractit furth of the buikis thairof, vnder

¹ *Spotswood’s Church Hist.*, 433.
Adv. Library. 28.

⁴ *Balf. Ann.*, II.

² *Wood’s Peerage*, I. 123.

⁵ *Ibid.* 42.

³ *Anon. Hist. Scot. MSS.*

the figne and subſcriptioun of James Prymrois, Clerk of Counfall, of the dait the tent day of Auguſt laſtbypaſt; beirand, that Williame Lord Douglas and James Lord Torthorrell compeirit perſonallie befor the ſaidis Lordis, and promeiſt in thair prefens, that betuix and the tuentie day of September than nixtocum, quhilk is this day, thay ſould ather perſew the ſaid Andro, criminallie, befor his Maieſteis Juſtice and his deputis, in the Tolbuthe of Ed^r, ffor airt, pairt, red and counfall of the Slauchter of vni^q^{le} James Lord Torthorrell, or ellis, that thai ſould reconceill thame ſelfſis with the ſaid Lord Vchiltrie, and be agreit with him.—And in reſpect, that thai tuik betuix and this day to perſew him, quhilk is the laſt day contenit in the Act; thairfor, the ſaid Lord Vchiltrie, for tryell of his innocencie of the ſaid allegit cryme, now compeiris, and offeris him reddie to abyde the tryell of the law, for airt, pairt, red and counfall of the ſaid Slauchter; quhairof he is altogidder Innocent, diſaſſenting to all maner of continuatioun; proteſting, that the ſaid Williame Lord Douglas and James Lord Torthorrell, nor na vtheris perſones be hard to perſew him for the ſaid allegit cryme, in ony tyne cuning; in reſpect that thai nor nane of thame compeirit to inſiſt in this perſute.

And lykwayis, the ſaid Lord Vchiltrie aſkit inſtrumentis, of the entrie and production to the Juſtice of *Andro Stewart*, his ſervand, to abyde quhatſum-euir tryell can be laid to his charge, for the ſaid allegit Slauchter. Lykas, the ſaid Andro Stewart, for himſelf, being perſonallie preſent, offerit himſelf to the tryell of the law, for the Slauchter aboue ſpecifeit; quhairof he declairit him ſelf to be maiſt Innocent; diſaſſenting to all continuatioun; and thairupone aſkit inſtrumentis.

LETTER, *the Privy Council to the King, anent the Slauchter of the Lord Torthorwall.*¹

MOST SACREID SOUËRAYNE,

THAIR hes ane unhappie accident fallin out heir, this morning, betuix ſex and ſevin of the klok, by the ſlauchter of *James Douglas of Torthorwall*, committit be *W^a Stewart*, ſone to vni^q^{ll} *S^r W^a Stewart*, quho, althocht the principall pairtie had agreied with the ſaid vni^q^{ll} *James*, and reſſaveit Afflythment and ſatiſfactionne to his awin contentment, the ſaid *W^a* miſknew this agrement, paſt to the horne for not geving aſſurance, and awaittit the occaſioun of this morning; quha, finding the ſaid *James* ſimplie accompaneid vpon the Hie Streit, a littill beneth Croce, he diſparatlie ſett upone him, and, with ane ſtraick, ſlew him; and the gaitt² being quyett, he eſcheapid. We have cauſtit chairge the partie compeire and anſuer, and ſall proſequit and follow out all wther ordinarie courſe of law and juſtice quhilk is vſuall and accuſtumed in the lyk caiffis. And, in cais of his not compeirance, ſall caus denunce him, and pairvone ſall direct Commiſſiounes to the ordinarie Magiſtratis of the country for the perſute of him, with Proclamatiounes, containing a promes of rewarid to ony perſounes quho will tak him. Quhairof we haif thoct meitt to mak your ſacred Ma^{tie} aequented, and in all reverence ſall conforme our ſelfſis to quhatſumevir forder directionne it ſall pleis your hienes to give in this mater.

¹ From the *Earl of Hadington's MSS.*, General Register Houſe.

² Street.

And sua, praying God to grant wnto your sacreid Ma. a long, happie, and prosperous regnne and eternall felicitie, we rest Your Ma. moift humble and obedient subjectis and servitouris,

A. CANCELL^s. DUMBAR. CRAFT. LOTHEANE. LOVAT. BLANTYRE. BALMERINOCH.
HALLIROODHous. BURLY. R. COKBURNE. S. J. SKRYMGER of Dudop. S. T. HAMILTOUN.

[DATE not preserved ; but Jul. 7 (or 14) 1608.]

Child-Murder.

Nov. 9.—BEATRIX WEIR, spous to Johnne Ferrie, buikbinder.

Dilaitit of airt and pairt of the distruction of an infant bairne, procreat in Adulterie.

Compeirit James Hammiltoun, seruitour to my lord Aduocat, and product ane Warrant of the Secreit Counfall ; quhair of the tenuour followis.

JUSTICE, Justice Clerk and your deputtis. Forfamekill as the nynt day of November instant is appointit to Beatrix Weir, spous to Johnne Ferrie, buik-binder, and Bessie Pook, dochter to Williame Pollok, for pair compeirance befor you, to vnderly the lawis for the crewall, barbarus and detestable Murthour of the said Beatrix bairne, procreat be hir in Adulterie: And seing the said Beatrix constantlie abydis be hir denyell of that odious and vyld fact, thinking pairby to eschew pwneifchment, althocht the said Bessie Pollok hes confessit pe fact and Murthour to haif bene committit be pame two, and constantlie standis be hir Confessioun.—It is our Will pairfoir, and We command you, to continew the said dyet for a systene dayis, to pe effect, in this meayne tyme, the tua women may be confrontit, and fuche ordinare meanis as may discouer and bring to licht the certane treuth of that matter: And that you gif ordour and direction for committing thame bothe to strait waird, within the Tolbuth of Edr, thair to remane quhill the nixt dyet to be appointit for pair tryell: ffor doing quhair of, thir presentis fall be your Warrant. Att Edr, the sevint of November, 1609.

Jo. PRESTOUN. S^r. R. COKBURNE. L. CRAIG, Cl^s Reg^{ri}.

Conforme to the quhilk Warrant, the Justice committit the said Beatrix Weir to Waird, &c.¹

Witchcraft — Administering Enchanted Drink.

Nov. 9.—JAMES MURE in Mynniehagen.²

Dilaitit of airt and pairt of Bewitching of Margaret Wicht in Dalmellingtoun, and taking fra hir of hir Wittis, be ministrating to hir of ane Inchantit drink.

PERSEWAR, Margaret Wicht. PRELOCUTOUR for the pannell, Joseph Myller, Aduocat.

The pannell takis instrumentis of his entrie, and offeris him self to the tryell of the Law, disaffenting fra all continuatioun; and protestis for releif of his caution.

THE JUSTICE, in respect thair is na sufficient number of Assyse compeirand this day,³ continewis this dyet to the 3 day of the (Justice) air (of the shire of Air), or soner, vpon xv dayis wairning, to vnderly the law for the said cryme, vnder the panes contenit in the Actis of Parliament; quha fand Sir Johnne Wallace of Carnell, kny^t, cautioner for his entrie, to the effect foirsaid.

¹ No entry appears to show the result of this matter. ² A depender of the *Mures of Auchin-drane* and Minihagan. See their Trial for Murder, Jul. 17, 1611, &c. ³ All the Assisers absent, eighteen in number; 'ilk ane of thame vulawit in the pane of ane hundreth merkis.'

(1610, Feb. 7.)—For the relief of his cautioneris, and tryell of his awin innocencie of the saidis alegit crymes,¹ he now compeiris, and maist willinglie offeris him self to the tryell of the law for the samyn, disassenting fra all continuatioun. And in respect that the said Margaret nor na vtheris compeiris this day to instist in his persute, for the saidis allegit crymes, and that this is the secund dyet keipit be him, for abyding tryell thairof, haifing cum threfcoir myles, or thairby, to that effect; and that the samyn persute is bot malicioullie inventit aganis him, be the said Margaret, for hir awin previe advantage, be raising of Letteris aganis him; and the persones summond be hir vpone his Assyse, of quhome scho hes ressaute grit sowmes of money in compositioun, to abyde at hame: Protestis, in respect of the premisses, for (Sir) Johnne Wallace of Carnall his releif of his cautionerie, and that he be nocht callit, trubellit, or persewit, at the instance of the said Margaret, or ony vther pairtie, for the allegeit crymes aboue specifit; rather yit that my lord Justice suffer Letteris to be direct aganis him to that effect, in ony tyme cuming: Quhilk protestation the Justice admittit, &c.

[*Sir Williame Hairt, Justice-Depute.*]

Hurting and Wounding — Shooting of Pistolets.

Nov. 17.—ALEXANDER FRENCH, brother to Johnne Frenche, Tutour of Thornydikis.²

Dilaitit of airt and pairt of the Hurting and Wounding, with schottis of pistolettis, of George Home of Bassinden and Andro Home, his brother, as in the following DITTAY.

FORSAMEKILL as it is expresse provydit, statute, and ordanit, be the Actis of Parliament, that na manner of persone nor persones tak vpone hand to beir, weir, or schute with hagbuttis or pistolettis, or have the samyn in thair cumpanies, oppinlie, outwith houffis, vnder the pane of cutting of thair richt hand; as the saidis Actis of Parliament at lenth beiris: And trew it is, that the said Alexander French, accompaneit with Johnne French, Tutour of Thornydykis, his brother, and vtheris thair complices, nocht only hes borne and worne pistolettis vpone thair persones and in thair cumpaneis, oppinlie and avowedlie, within dyuerse pairtis of the boundis of the scherefdome of Beruik, and bailzerie of Lauderdaill, thir dyuerse yeiris bygane, daylie and continuallie, as thair ordiner wappones; bot also, the said Alexander and Johnne, his brother, being surelie informet, that the said Andro Home was to cum furth of the said Place of Bas-

¹ Having been summoned to appear before the Justice this day.

² The pursuers passed from the pursuit of 'Patrik Cranstoun of Corbies, Robert Ker of the Schaw, Patrik Tait, and Williame Cranstoun, his tua fervandis, Johnne Frenche, callit the *Baylard*, sone naturall to Robert Frenche of Thornydykis; and Thomas Erikyu.'

finden to Reidpeth, for doing of certane his necessar effairis and buffines; thay, vpon the xxv day of September lastbypast, being bodin in feir of weir, with secrettis, plait-slevis, lances, hagbuttis and pistolettis, lay at await in the said Andro his hie way, besyde Fawnes-furd, and thair set vpon him, and crewallie invaidit him for his Slauchter, schot and dilaschet¹ thair hagbutis and pistolettis at him, hurt his horse, and chaist him self to the Place of Carolefyde; contravening thairby the tennour of the said Actis of Parliament. Be occasioun of the quhilk perfute, thay being raisit in the cuntrie, and the bruit passand, that the said Andro was slane and tane in to Carrolefyde, and the samyn haifing cum to the said George knowlege, he, to try the certantie thair of, lap on vpon horsebak, and cam ryding to the Place of Carolefyde, in sober maner, him self allane, lipning for na harme, iniurie or perfute to haif bene done to him,—the said Alexander French, accunpaneit with his said brother, and vtheris thair complices, nochtwithstanding of the former iniurie done as said is, being bodin in feir of weir, with hagbuttis, pistolettis and vtheris wappones, *invafive*, convenit thame selfis at the Chapel-wallis besyde Corfbie and dykis² thair of, quhair thai lay darnit³ in secreit maner, awaiting, gif ony wald cum and revenge the former deid; and thair, at the Chapell-dykis, in the said George cuming to the said Place of Carolefyde, vmbiefet his hie-way, and maist crewallie invaidit him for his Slauchter, schot and discharget thair pistolettis and hagbuttis at him, quhairwith thay schot sewin bullettis in his left thie, hurt and woundit him thairwith, to the effusioun of his bluid in grit quantitie: And the said Alexander is airt and pairt of the saidis crymes; and hes thairthrow incurrit the panes and punisichment prescryuit be the said Act of Parliament.

PERSEWARIS, George Home of Bassindene, Alexander Home, his brother; Sir Thomas Hammiltoun.

PRELOCUTOR for the pannell, Mr Williame Oliphant.

It is allegit aganis the first article of the Dittay, anent the generalitie of the beiring and weiring of pistolettis, that the samyn is nocht relevant, nocht condiscending the speciall tyme and place, quhair and quhan the samyn war borne or worne. The Aduocat declairis he perfewis the pannell for beiring and schuiting of hagbuttis and pistolettis, the tyme lybellit, outwith the boundis of his duelling houffis, cloiffis and yairdis. Andro Home, ane of the persewaris, declairis, that in his perfute be the Tutour of Thornydykis, Alexander his brother was in company with him, with ane lance; the Tutour haifing pistolettis, and schuitting at him thairwith.

It is allegit be Alexander French, that this Dittay can nocht be put to the knowlege of ane Assyse; under protestatioun, that he nawayis grantis the Dittay, becaus the samyn was done within the Place of Corfbie, and yairdis thair-

¹ *Deslascher*, Old Fr. to discharge, to let off.

² Walls, stone fences.

³ Hidden, concealed.

of.—It is anſuerit be my lord Advocate, aucht to be repellit, in reſpect of the ſummondis and place thairin deſignit, viz. outwith the Place of Corſbie; nather yit was the Place of Corſbie the ſaid Alexander Frenches duelling place.

It is allegit for the ſaid Alexander, vnder proteſtatioun fairſaid, that the ſaid Alexander, the tyme lybellit, and the ſpace of the moneth befor, duelt and maid his reſidence within Corſbie; lyk as, the perſewar, George Home, aſſiſtit with ſome perſones, bodin in feir of weir, with hagbutis and piſtolettis, perſewit and invaidit the ſaid Alexander, and ſchot thair hagbuttis and piſtolettis at him, he being then ganging within the corne yaird of Corſbie, at the barne-dur thair of; of the quhilk ſchot the barne-dur can yit record: And vnder proteſtatioun, that he nawayis grantis ony ſchuting, as he ſchot nocht, he aucht nawayis to be put to the knowlege of ane Inqueiſt for the ſaid cryme lybellit, becaus he mycht haif lauchfullie borne and worne piſtolettis, and vſet thame for his awin defence, within his awin duelling place, he being perſewit, as ſaid is.—Anſueris, vnder proteſtatioun, that I nawayis grant Corſbie to be the defenderis duelling place; that he aucht to be put to the knowlege of ane Aſſyſe, becaus the fact lybellit was committit outwith the place of Corſbie and yairdis thair of, in the place lybellit; nather is hagbuttis or piſtoletis wappones of lauchfull defence.

THE JUSTICE referrit the ſamyn to the knowlege of ane Aſſyſe.

George Home of Baſſinden, be his aithe, declairit, that Alexander French, being outwith the dykes of Corſbie, ſchot ane piſtolet at his ſervand Johnne Baird, the tyme contenit in the Dittay. The ſaid Andro Home, his brother, lykwayis ſuorne, declairis, that he, being perſewit be Johnne French, Tutour of Thornydikis, with hagbuttis and piſtolettis, the tyme lybellit, the ſaid Alexander Frenche, his brother, followit him with ane lance in his hand, being vpone fute, and perſewit him. The ſaid George Home, be his ayth, declairis, that Alexander French, this tua yeir bygane, hes borne and worne piſtolettis, as his ordiner wappones; contrair the Actis of Parliament.—Upone the quhilkis Declarationis, be the perſeweris athis, gevin as ſaid is, aſkit inſtrumentis.

VERDICT. The Aſſyſe, be the mouth of Johnne Cranſtoun in Baſſinden, chancellor, for the maiſt part, Clenges the ſaid Alexander Frenche of beiring, weirring and ſchuitting of hagbuttis and piſtolettis; and of ſchuitting of hagbuttis and piſtolettis at Andro Home, brother to George of Baſſinden; and of the tua firſt articles of Dittay foundit thairupoun: AND all, in ane voce, ſindis the ſaid Alexander to be Giltie of his being in cumpanie with Gilbert Cranſtoun; quha, the tyme contenit in the Dittay, ſchot ane hagbute or piſtolett at George Home of Baſſinden, and hurt him thairwith in his left thie; quhilk ſchote was ſchote be the ſaid Gilbert, outwith the barne-yaird-dykis of Corſbie, the ſaid Alexander being remaning within the barne-yaird for the tyme.

THE JUSTICE ordanit the said Alexander Frenche to be committit to waird, within the Tolbuth of Edinburgh, thairin to remane vpon his awin expenffis, vnto the tyme he war advyfet with the Counfall, anent his dome, to be pronuncet thairupone.

Hurting and Wounding — Shooting of Pistolets.

Nov. 17.—JOHNE FRENCH, Tutour of Thornydikis, and Gilbert Cranftoun, father-brother to Patrik Cranftoun of Corfbie.

THE JUSTICE ordanit Laurence Symfoun of Craighous and James Sandilandis of Gilliswallis, cautioners for the said Johnne, to be in amerciament in the pane of ij^c merkis, for his nocht entrie; and Robert Hepburn in Eist Fentoun, brother to the Laird of Craig, as cautioner for the said Gilbert, in the pane of ij^c merkis: And felyk, that the said Johnne and Gilbert fould be denuncit rebellis and put to the horne, and all thair moveabill guidis to be efcheit, &c.

Resetting and Maintaining Alexander Ruthven — Gowrie's Conspiracy.

Nov. 17.—DAVID SPALDING of Effintullie

Compeirit with M^{ris} Williame Oliphant and Henrie Balfour, his prelocutouris, quha enterand him felf vpon pannell, exponit and declairit, that fforfamekill as, vpon finifterus informatioun gevin to the Lordis of Secreit Counfall, command was gevin be thair lordfchipis to Sir Thomas Hammiltoun of Bynnie, kny^t, Aduocat to our fouerane lord, for his hienes entreis, to perfew him befor the Justice or his deputis, for the allegit treffonable Refsetting, fupplieing, and maintaining of Alexander Ruthven, burges of Perth, his Maieftis declarit tratour, within his duelling places of Effintullie and Enoche, at the tymes particulerlie fet down in the said informatioun; lyk as, criminall Letteris being direct at the said Aduocattis instance, aganis the said David, be the quhilkis he was charget to find cautioun actit in the buikis of Adiornall, that he fould compeir befor the Justice or his deputis, this day and place, and vnderly the Law for the faidis allegit crymes, and vtheris contenit in the Letteris direct thairupoun, quhairof he is altogidder innocent: ffor obedience quhairof, vpoun the fourt day of July lafbypaft, he f fand Harie, Lord St Colme,¹ cautioner for his compeirance this day, &c.; for quhais relief, and tryell of his awin innocencie, he now compeirit; difaffenting fra all maner of continuatioun: And in refpect our fouerane lordis Aduocat, nor na vtheris his lordfchipis informeris wald infift in his per-

¹ This Nobleman was the second son of James, Lord Down, and brother of James, Earl of Moray. He had the monastery of St Colme's Inch and lands belonging thereto, erected into a temporal lordship, with the title of a Peer of Parliament, as Lord Saint Colme. He died Jul. 12, 1612.

fute, tuik instrumentis, &c. ; and proteffit for his said cautioneris relief ; and that he him self fould nocht be callit, trubillit, nor perfewit for the allegit crymes aboue mentionet ; bot that he fould be affoilzeit *simpliciter* thairfra, in all tyme cuning.

Striking a Person within the Tolbooth of Edinburgh, during the Sitting of the Lords of Session.

Nov. 18.—Mr JOHNNE KERR, sone to Andro Ker of Mylnerig, and George Lokhart, feruitour to the Laird of Corstorphin, younger.

Dilaitit, accuset and perfewit, be DITTAY, of the Crymes following.

FORSAMEKILL as, be Act of our fouerane lordis threttene Parliament, his Maiestie and estaittis ordanit, that quho enir fould strek or hurt in any tyme thaireftir, any persone within the Vtter-Tolbuth of Ed^r, the tyme that the Lordis of Sessioun sittis for administratioun of Justice, sal incur the pane of dait ; and fall be accuset criminallie thairfor : Without regaird quhairof, and of that respect and reuerance quhilk it became the saidis Mr Johnne and George, or ather of thame, to haif borne to the Lordis of Sessioun, being conuenit in the Inner Tolbuthe of this burcht, for administratioun of Justice to his Maiesties legis, and thairby representing his Maiesties persone and authoritie ; the said MR JOHNNE, vpon the aughtene day of November instant, cam to the Vtter-hous of the said Tolbuth, callit the Mid-hous, and seing the said George Lokhart, feruitour to the Laird of Corstorphin, Younger, following his maister, in companie with my Lord of Kilsyth,¹ desyrous to enter within the said hous ; and he beiring grudge and malice aganis the said George, vpon sum former discoidis betuix the said Mr Johnnes father, him self, and his vmq^{le} brother Andro Ker and the said George Lokhart, the said Mr Johnne stuid in the said dur, and wald nocht suffer him peceable to pas by, bot forceable rusched the said George, in the bygoing, and had almost strukin him to the grund ; and immediatlie thairefter, drawing his dager, invalidit him thairwith, and strak at him for his Slauchter ; and strak the said George throw the cloik, within the said hous, and had nocht faillit to haif slane him, gif the said Mr Johnne had nocht bene stayit and red be sum gentilmen being present for the tyme, quho wer commandit be my Lord of Kilsyth to red² thame ; and tuik the said Mr Johnne to waird, for his said offence : Quhairby he hes transgressed the said Act of Parliament, and incurrit the panes contenit thairin. LYK AS, the said GEORGE LOKHART, vpon the said aughtene day of November instant, about nyne houris, or thairby, befor none, haifing of lang tyme of befor confaut ane deidlie feid, haitrent, and malice, aganis the said Mr Johnne Ker, sone to the said Andro Ker of Mylnerig, for certane iniurious langage past betuix thame, and for the said George hurting of Andro Ker, brother to the said Mr Johnne, in the hand ; and this day, finding the said Mr Johnne standing in the dur of the Mid-hous of the said Tolbuth, quhilk cumis in frome the bak-turnepek thairof, the said George violentlie rusching the said Mr Johnne fordwaird within the said dur, immediatlie thaireftir drew his dager, and strak at the said Mr Johnne thairwith, for his slauchter, vpon the heid, with the said dager ; and had nocht faillit to haif slane him, gif the said George had nocht been stayed be sum gentilmen, being present for the tyme, quha entred betuix thame, and be commandiment of my Lord of Kilsyth, in quhois presence the said cryme was committit ; quha causit apprehend the said George, and put him in waird : Quhairby he hes lykwayis transgressit the said Act of Parliament, and incurrit the panes thairin contenit.—To

¹ Sir William Livingston of Kilsyth, one of the ordinary Lords of Session, and afterwards a Privy Councillor, &c.

² To separate them ; by no means a safe or easy office in those times, when ' quhairgaris' and ' pistolets' were the swift messengers of vengeance. The *redder's* portion, in an affray of this sort, became proverbial—for both parties often joined in punishing his temerity ! Hence, the *redding-straik* was frequently one of the deadliest in the ' *tuilzie*.'

the taikin, the said Lordis of Sessioun, haiffing callit thame, and ather of thame, befor thair Lordschipis, for tryell of the said cryme, thay, be the saidis perfonis awin Confessioun, and Deposition of dyuerse famous witnesse, fand that the saidis Mr Johnne and George, and ather of thame, had contravenit the said act; and Ordanit thame to be put to ane Tryell for the samyn.

Eftir reiding of the quhilkis tua Dittayis, and accusatioun of the said Mr Johnne Ker and George Lokhart, be vertew thair of, our souerane lordis Aduocat, for verifeing thair of, producet the said Mr Johnne and George awin Confessioun, togidder with certane Depositiones of dyuerse famous¹ Witnesse, suorne and examinat in presens of the Lordis of Sessioun, in the said matter.

The pannell, Mr Johnne Ker, denyis that poynt of Dittay, quhair he was 'within the Tolbuth,' the tyme of the committing of the cryme; bot was vpone the stair and entrie of the dur. Lyk as, the saidis perfonis on pannell, being inquyret, judicallie, be the Justice, Gif thai had any thing to say, quhy the saidis Dittayis producet aganis thame sould nocht be put to the knowledge of ane Assyse? For answer thairto, maist humlie acknowlegit and confessit the premisses to be of veritie; and referrit thamefelfis in his Maiesteis will for the samyn. In respect quhair of, the Justice Ordanit the saidis perfonis to be tane bak to waird to the Tolbuth of Ed^r, thairin to remane quhill his Maiesteis will war schawin thairanent.

Jamesucken—Murder under trust.

Nov. 22.—JOHNNE STEWART, sone to vmq^{le} James Lord of Doun, (brother-german to Harie Lord St Colme.)²

Dilaitit of airt and pairt of the murthour of vmq^{le} Johnne Gib in Over Lessdodie; committit in the moneth of Junij 1608 yeiris.

PERSEWARIS, Bessie Dik, the relict of vmq^{le} Johnne Gib. Sir Thomas Hammiltoun.

THE said Johnne Stewart, being accuset of the said slauchter, maist humblie, vpone his kneysis, in presens of the Justice and Lordis of Secreit Counfall, Confessis the slauchter, and craves God and the Kingis Maiestie pardoun; And offeris to the partie quhat satisfacioun he is able to content thame with, be the advyse of his frendis. Quhairupoun the Aduocat askit instrumentis.

The Aduocat producet the DITTAY, following.

JOHNNE STEWART, sone to vmq^{le} James Lord Doun, 3e ar indytit and accuset: Forfamekill as 3e, hauing confauet ane deidlie feid, haitrent, and malice, aganis vmq^{le} Johnne Gib in Over Lessdodie, causses, without ony occasioun gevin be him to 3ou; bot only, for ane suddane discord falling furth betuix 3our horse-boy and fervand, quhair of the said Johnne was altogidder innocent and ignorant, 3e, vpone the . . . day of Junij, the 3eir of God I^m.Vj^r. and aucht 3eiris, drinkeand at Keltieheuch, in the hous of Johnne Greve pair, avowit maist crewallie and maliciously to bereif pe said vmq^{le} Johnne Gib of his lyfe: And for performeing pairof, being instantlie bent to seik him at his awin hous, and 3e being slayit be James Craufurd, and sum vtheris quha hapnit than to be in 3our company, 3e, to red

¹ Persons of good fame and credit.

² So described in the second diet. See Note to Nov. 17, 1609.

your self of pat impefchment,¹ faythfullie promittit and gaif your hand² to the said James Craufurd, that 3e fould nocht pat nycht go towardis the said Johnne Gibis hous, bot pat 3e wald ryd towardis the brig of Gairny: Nochtwithftanding quhairof, fa fone as 3e gat your horfe, 3e raid in all haift to 3e said vmq^{le} Johnne Gibis hous, in Over Leffodie, about pe glomyng of the nycht,³ and chopping⁴ at pe dur, and calling vpone him be his name, he being than lyand in his naikit bed, takand the nychtis rest, and feiring na iniurie, invasioun, nor harme to haif bene done to him, be any perfonas, and specialle by 3ow, quha in all tyme preceeding had bene in professit freindfchip with him, and had reffaut dyuerse plesouris and gratitudis of him, fa fone as he hard your voce, instantlie raife in his fark,⁵ and oppint his dur to 3ow; quhair 3e, without ony caus, vpgeving of freindfchip, or adverteifing him of his skaith or danger, straik him with your dager in the breift, neir the heart, and gaif him pairwith aue deidlie wound, vnder trest, freindfchip and credeit: Of the quhilk wound he depairtit this lyfe within les nor fourtie aucht houris pairefter. AND sua, 3e maift crewallie and vnmerciefullie flew the said vmq^{le} Johnne Gib, vnder clud and filence of nycht, within his awin hous, be way of Hame-fuckin and vnder trest; to pe grit contempt of our fouerane lord, his hienes auctoritie and lawis, &c.

TO THE TAIKIN,⁶ that, incontinent paireftir, 3e returnet bak to the said Johnne Grevis hous in Keltieheuch, and calling furth vpone Nicoll Rowane, inquyret of him, 'quhais man⁷ Johnne Gib was?' Quha anferit, that 'he was my Lord Chancelloris man;' 3e said, 'and⁸ he war the Devillis man, 3e had gevin to him the thing that wald flaik⁹ him!' To the taikin also, pat vpone pe morne paireftir, 3e, cuming in, in the moirning, to ane houle in Aberdour, quhair James Baveredge, in Keltieheuch, and Alex^r Kellok war drinking, 3e demandit at James Baveredge, 'Quhat newis?' Quha anfuering, that 'He hard na newis that was guid!' and, 'That 3e mycht haif bene in your bed that nycht, quhan 3e gaif that hurt to Johnne Gib, quhairof he wald die!' 3e, taking out your bludie dager, said, 'he could nocht be the war,¹⁰ becaus 3e had gevin him bot ane po^r!'¹¹ To the taikin lykwayis, 3e, being charget to find cautoun, to compeir befor the Justice, at aue certane day bygane, to haif vnderlyne the law for the said cryme, past to pe horne; quhairat 3e haif lyne continuallie fenfyne.

THE JUSTICE continewis this matter, anent Johnne Stewartis tryell, to Fry-day nixt, quhill¹² he be advyset with the Counsell.

(Nov. 24.)—THE JUSTICE Ordanis the pannell to be put to ane Assyse; nochtwithftanding his becuming in Will, the last dyet.

ASSISA.

Willame Trumbill of Airdrie; Johnne Dunbar of Mynnieweik; William Cuming of Ernesfyde; The Laird of Partoone, 3ounger; Johnne Johnnestoun of Raiccleuch, tutour of Johnnestoun.¹³

THE pannell of new agane Confessis the Dittay, and craves Godis mercie, &c.

VERDICT. Eftir accusatioun of the said Johnne Stewart, be Dittay, and the said Johnnes Judiciall Confessioun, maid in prefens of the Justice and Assyse, granting the said fact; and maift humble, vpone his kneyis, craveing God, our fouerane lord the Kingis Maiestie, and the partie, pardoun thairfoir; the said Assyse, be the mouth of the said Johnne Johnnestoun, chancellor, all in ane voce,

¹ Hindrance, old Fr. ² A solemn mode of affirmation and promise, still used amongst the peasantry of Scotland; and considered as sacred and binding as an oath. ³ Twilight. ⁴ Knocking at the door. ⁵ Night-shirt. ⁶ In token; proof, or testimony of the above. ⁷ Fendal vassal. ⁸ If; an'. ⁹ Literally, quench; *sloken*, or *stake*. ¹⁰ Worse. ¹¹ Probably for *power*, only one blow or stroke. 'Purr' is still used, to denote a push made by a bull or an ox, &c. when he runs at and gores another. ¹² Until. ¹³ The rest were 'mercheandis,' and persons of no note.

ffand, pronuncet, and declairit the said Johnne Stewart, accoirding to his awin Judiciall Confessioun, to be ffylet, culpable, and convict of the crewall Murthour and slauchter of the said vmq^{le} Johnne Gib: committit in maner, and at the tyme specifseit in his Dittay.

SENTENCE. To be tane to the place of his Executione, and thair his heid to be struckin from his body; and all his moveabill guidis to be escheit and inbrocht to his hienes vfe, as convict of the said cryme. Quhilk was pronuncet for dome.

Wearing of Hagbutts and Pistolets—Perjury.

Nov. 22.—ROBERT JOHNNESTOUN, feruitour to my Lord Forbes.

Dilaitit of the beiring and weiring of hagbuttis and pistolettis, contrair the Actis of Parliament; and of Periurie, as the Dittay beiris.

PERSEWAR, Sir Thomas Hammiltoun of Bynnie, kny^t, Aduocat to our souerane lord.

PRELOQUUTOIRIS for the pannel, Mr Alexander King, Mr Johnne Ruffell, Mr Robert Learmonth.

My Lord Aduocat produceit ane Decreit of the Lordis of Counfall, decerning the said Robert to haif contrauentit the Actis of Parliament, in bering and weiring of hagbutis and pistolettis; of the dait, at Ed^r, xxvij of Junij. The Aduocat infistis vpoun the beiring and weiring of hagbutis and pistolettis, quhairupoun the pannell askis instrumentis. My Lord Aduocat produceis his Maiesteis Letter, as Warrant of this persute.

It is allegit be Robert Johnnestoun, that he can nocht be put to ane Affyse, for weiring of hagbuttis and pistolettis, lybellit; becaus, be Act of Parliament, in November, 1600 yeiris, it is speciallie provydit, that sic personis as fall be persewit befor his hienes and Lordis of Secreit Counfall, and tryit be probatioun of Witneses, giltie of bering and weiring of hagbuttis or pistolettis, fall nocht incur the corporall punisfment in the former Actis, be amputatioun of the rycht hand; bot only to be punisfchit, be wairding of thair personis, escheit of thair guidis-moveabill, or payment of sic pecuniall sowmes of money as his hienes and lordis of Secreit Counfall fall declair: And trew it is, that in the persute, intentit be my lord Aduocat, quha is now persewar aganis Airthour Lord Forbes, for the particuler factis contenit in the persute intentit thairupoun; bot speciallie, of his Lordschip being accompaneit with Dauid Forbes of Petlethie, his brother, Williame Garioche, younger of Kinstair, and the said Robert, now enterit vpone pannell, was challanget *per expressum*; in maner as is contenit in the said Decreit: Be the quhilk Decreit, the saidis Lordis of Counfall, nocht only tuik tryell anent the said Lord Forbes, for him self, bot also anent the saidis Williame Garioche and Robert Johnnestoune thair beiring and weiring of hagbuttis and pistolettis; and finding thame giltie thairof, ordanit the said Robert Johnne-

floun and Williame Garioche to be committit to the tolbut of Ed^r, and that for weiring and beiring of pistolettis, in the tyme contenit in the Dittay : And thairfore, the said Robert Johnneftoun can nawayis be put to ane Affyse. And for verificatioun, producet the Act of Parliament, with the Decreit of Counsell.—It is anfuerit, be my lord Aduocat, that the Act of Parliament ordanis na processe intentit befor the Justice for weiring of hagbutis and pistolettis to stay, bot quhair the saidis defenderis has been persewit befor the Lordis of his Maiesteis Secreit Counsell, be his Maiesteis Thesaurer or Aduocat : And the Decreit of Secreit Counsell produceit beiris na actioun to haif bene intentit or persewit, be his Maiesteis Thesaurer or Aduocat, befor the Counsell, aganis the pannell, for the cryme contenit in the Dittay. Thairfoir, the Decreit of Counsell producet can nocht stay proces.

It is allegit, that the Justice can nocht proceed aganis the pannell, for the Periurie, in respect thair is na Warrant gevin for his persute thairfoir. And forder, the Warrant producet resolues only anent the puneischment to be inflicted, be amputatioun of his rycht hand, he being convict of beiring and weiring of pistolettis.—To the quhilk, it is anfuerit, be my lord Aduocat, aucht to be repellit, in respect of the Warrant gevin to him be the Lordis of Secreit Counsell to persew the pannell, baith for the beiring and weiring of pistolettis, and for the Periurie contenit in the Dittay.

THE JUSTICE continewis this matter to the xxiiij *instantis*, quhilk is Fryday ; and ordanit the pannell to be tane bak agane to waird.

(Nov. 24.)—THE JUSTICE, haifing acquentit the Lordis of his Hienes Secreit Counfall with the proces persewit be his hienes Aduocat, aganis the said Robert Johnneftoun, for bering and wering of hagbutis and pistolettis, and with the haill allegiances and defenssis proponit *hinc inde* be thame, and anfueris maid thairto ; Eftir reding of the Act of Parliament and Decreit of the saidis Lordis of Secreit Counfall, quhairupoun the defenderis alledgeances and defence is foundit, and produceit for verificatioun thairof ; ffindis, with expres auise of the saidis Lordis of Secreit Counfall, that this mater aucht nocht to be put to the knowlege of ane Affyse, in respect of the foirsaid Act of Parliament, and Decreit of the saidis Lordis of Secreit Counfall, produceit : And Ordanis the said Robert to be tane bak agane to the Tolbuthe of Ed^r, thairin to remane, vpon his awin expenssis, quhill he fatisfie his hienes Thesaurer, accordring to the Counfall modificatioune.

Slaughter.

Dec. 29.—WILLIAME GUTHRIE of Ravinshie.

Dilaitit of airt and pairt of the Slaughter of vinq^{le} Patrik Gairdin of that Ilk ; committit in Maij I^m.V^c. lxxviij.

PERSEWERIS, Robert Gairdin, oy¹ to the defunct, Mr Tho^s Henderfon, substitute to the Lord Aduocat.
PRELOCUTOUR for the pannell, Mr Thomas Hoip.

The pannell takis instrumentis of his entrie ; and producet ane Respett, vnder the Previe Seill, of the dait, Jan. 24, 1600, maid and grantit for the space of xix yeiris : And, in respect thair of, allegit that the Justice could nocht put him to the tryell of ane Assyse.—It is anfuert, that the Respett is null ; in respect, conform to the Act of Parliament, he sould haif satisfeit the pairtie, and schaw ane Letter of Slanes thairupoun.

THE JUSTICE admittis the Respett producet ; and Ordanis the pannell to find caution to satisfe the partie ; quha fand Alexander Guthrie, ffear of that Ilk, cautionne with himself, to satisfe the partie ; conforme to the lawis of this realme.

[*Sir Williame Heart, Justice-Depute.*]

ASSESSORES JUSTICIARIO.

Mr Johnne Prestoun, President,² Walter Lord Blantyre, My Lord Previe Seill,³ My Lord Kilsyth.⁴

Barbarous Murder—Shooting with Hagbuts, &c.

Feb. 2, 1610.—JAMES GORDOUN, in Over Auchinrath, eldest sone to Johnne Gordoun of Liecheftoun, and Alexander Gordoun of Oxhill.⁵

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Alexander Abircrumbie of Pitmedden.

PERSEWERIS.

Hectour Abircrumbie of Westhall, Adame, McWalter, and Robert Abercrumbie, all fones ; Williame Abercrumbie, as oy ; Sir Thomas Hammiltoun of Bynnie, kny^t.

PRELOCUTOURIS for the pannell, Mr Alexander King, Mr Thomas Mawer, The Laird of Lefnoir.

DITTAY against the Pannels.

FORSAMEKILL as the saidis JAMES GORDOUN and ALEXANDER GORDOUN, with thair complices, with convocatioun of our fouerane lordis legis, to the number of fyftene perfonas, or thairby, all bodin in feir of weir, with jakis, seereittis, steil-bonnettis, lance-staffis, fuordis, lang culveringis, dagis, and pistolettis, expresse prohibeit to be borne, worne, vfet, or schote with, be the Actis of Parliament, vnder the panes mentionat thairintill ; vpone the tuelff day of Marche, the yeir of God Im.Vc. lxxxxiij yeiris, haifing confauet ane deidlie feid, rancour, and malice aganis the said vmq^{le} Alexander Abercrumbie of Pitmedden, set vpone the said vmq^{le} Alexander, at the Moss of Cokftoun, lyand within the scherefdom of Elgyn and Forres, quhair he was passand his tyme at the halking, but⁶ ony company, except his falconeris, in sober and quyet maner, dreidand na evill, harme, iniurie, or persute of ony persone, bot to haif levit vnder Godis peax and our fouerane lordis ; and thair, expresse contrair the tennour of the Actis of Parliament, schot and dilaschet⁷ tuentie schote of hagbuttis and pistolettis at the said vmq^{le} Alexander ; quhairby thay schote dyuerse and findrie bulletis in dyuerse pairtis of his body : And haifing circuit him round about, that he was nocht abill to escaip, thay thairefter pat violent handis in his persone, tuik frome him his awin horse, and cuist him vpone ane bachillane naig,⁸

¹ *Oe* or *Oye*, grandson.
burn of Clerkington.

² Of Fentonbarns, President of the College of Justice.

³ Sir Richard Cock-

⁴ Sir William Livingston of Kilsyth, one of the Ordinary Lords of Session.
⁵ The case was argued before the Justice-Depute on Jan. 31 ; and in consequence of objections being started to the production of a Remission in favour of Alexander Gordon, and of a Relaxation granted to James Gordon by the Duke of Lennox, &c., the Justice continued the diet to this day.

⁶ Without.

⁷ Old Fr. *delascher*, to discharge, &c.

A foundered jade of a horse ; selected, no doubt, for the greater dishonour, and to give greater pain to the wounded man by its unsteady and jolting motion. *Shauchilland* has a similar signification.

quhairvpon thay convoyit him, as ane captiue and priffoner, the fpace of ane myle, or thairby, fra the faid Mofs, towardis the Place of Licheftoun: And being the lenth of ane half myle to the faid Place, ane of the perfonis that war of thair companie, of the speciall knowlege of the reft, haifing ane charget hagbut in his hand, charget with thre bullettis, preparit for the purpois, at thair speciall command and direction, behind the faid vmq^{le} Alexanderis bak, fchot him with thre bullettis throw the body; and thaireftir, maift barbarullie and crewallie, with thair drawin fuordis, cuttit him all in peces; and, as monfteris in nature, left nocht fax inche of his body, airmes, legis, and heid vndevydit, and cut afunder: And fa, was maift monftrouffie and crewallie flane and Murthorit be the perfonis foirfaidis: And thay and ilk ane of thame ar airt and pairt of the faid crewall flauchter; and aucht and fould be puneift thairfoir, and for contravening of the Actis of Parliament, in beiring, weiring, fchuitting, and flaying with hagbuttis and piftolettis, in maner foirfaid.

The faid James and Alexander Gordoun tuik thame to tua feneral REMISSIONES, producet be thame, for the crymes aboue writtin. The ane, grantit be our fouerane lord, vnder his hienes Grit Seill, to George Marqueis of Huntlie Erle of Enzie Lord Gordoun and Badzenoche, Sir Thomas Gordoun of Glwne, kny^t, the faid James and Alexander Gordones, and dyuerfe vtheris perfones, thair affifteris and pairt-takeris, for thair treffonable cuming, in opin hoftilitie and armour, to the landis of Auldquhannoquhen and Glenlivat, aganis Archibald, Erle of Ergyle, his Maieftis Lieutenant for the tyme, and aganis his Maieftis oift and cumpaneis, vnder the faid Erles leiding and command, in the moneth of October 1594 yeiris; and for the Slauchter of quhatfumeuir perfone or perfones, committit aganis his Maieftie or his hienes Lieutenant foirfaid, quhais names ar haldin as for expreffit, in the faid Remiffioun; and namlie, for the Slauchter of vmq^{le} Robert Frafer, his hienes Herauld, &c. As the faid Remiffioun, of the dait at Halyrudhous, the fecund day of Apryle, 1603 yeiris, in the felf proportis.—The vther of the faidis Remiffiounes, grantit be Ludovick, Duik of Lennox, his Maieftis Lieutenant and Justice, ouer the North pairtis of this realme, for the tyme, Remittand Johnne Gordoun of Licheftoun, the faid James appeirand thair-of and Williame his fones, Alexander Gordoun in Fernauchtie, and Williame Ewin, fervandis to the faid James; ffor thair treffonable being in cumpanie, affifting, airt and pairt-taking with George, fumtyme Erle of Huntlie, ffrances, fumtyme Erle of Errole, and certane vtheris his Maieftis declairit traitouris and rebellis, at the lait Conflict aganis Archibald Erle of Ergyle, &c.

It is allegit, befoir Interlocutour, be Mr Alexander King, that now he may compeir for James Gordoune, becaus he is relaxt; quhilk relaxatioun he producet.—It is allegit, be my lord Aduocat, the Relaxatioun is null; becaus it is execute at Ed^r, and nocht at the mercait croce of the head bur^t of the fchyre.—It is anfuerit, the Relaxatioun is guid aneuch at the mercait croce of Edinburghe.

It is allegit that the perfones on pannell can nocht be put to ane Affyfe, becaus thay haif obtenit Remiffioun fra the Duik of Lennox, quha had Commiffioun of his Maieftie to that effect; quhilk Remiffioun he producet. It is alle-

git, that the Remissioun is null, gevin be the Duik of Lennox; becaus his Commiſſioun gevis him power to grant Remiſſioun, be advyſe of his Counfall; lyk as, the Remiſſioun producet beiris, 'with advyſe of his Counſell,' and yit name of his Counſell hes ſubſcryuit the ſamyn. It is anſuerit, that thair is na ſpeciall perſones nominat Counfallouris in the Remiſſioun, and thairfor thair is na neceſſitie of thair ſubſcriptioun; and haldis him at his Remiſſioun, quhilk he referris to the Lordis. It is forder allegit, that the Remiſſioun is nocht paſt the Seillis, and is exped be ane quha had na place in the office of Theſaurer for the tyme; and forder, the ſaid Remiſſioun has paſt the Register, and thairfor ſould paſs the Seillis.—It is anſuerit, thair is na neceſſitie of paſſing the Seillis, ſeing it is grantit be his Maieſteis Commiſſioun.

THE JUSTICE, with advyſe of his Aſſeſſouris, appointit be the Lords of Se- creit Counfall, ſfindis, that this matter can nocht be put to the knowlege of ane Aſſyſe, in reſpect of the Remiſſiones producet. And ordanis the pannell to find cautionn, for ſatiſfactionne of the partie perſewaris, according to ordinance of the Lordis of Seſſioun.

Quhairupoun the perſones on pannell aſkit instrumentis: And ſſand my Lord Saltoun and the Laird of Leſnoir cautioneris, conjunctlie and ſeverallie, to ſatiſſie the parties: And the Laird of Leſnoir become obleiſt to warrand my Lord Saltoun.

The perſewaris proteſtis, that this perſute now intentit be thame, and Interlocutor aboue written, gevin thairupoun, be nawayis preiudiciall to thame in ony vther perſute movet aganis the pannell, in ane vther nature or qualitie, in ony tyme cuning: Quhilk the Juſtice admittit.—Lyk as, the pannell proteſtit in the contrair; and aſkit instrumentis thairupoun.

Slaughter.

Jul. 25.—WILLIAME GUTHRIE of Ravinſbie, lauchfull ſone to vmq^{le} Alexander Guthrie of that Ilk.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Robert Gairdin of Tullois; committit vpon the Mure callit Carbundow-mure, in the lie-way betuix Brechin and Dundie, in the moneth of Nouember, 1589; vpon ſet purpois, prouiſioun, and foirthocht felony.

PERSEWARIS, Robert Gairdin, as only ſone to vmq^{le} Robert Gairdin of Tullois; Mr Robert Gairdin, appeirand of Blairtoun; Commiſſar Clerk of Aberdene, as neir kinfman; Mr Robert ſſoullis, ſubſtitute to our ſouerane lordis Aduocat.

PRELOCUTORIS in defence, Mr Johnne Ruffell, The Laird of Guthrie.

The ſaid Williame Guthrie tuik him to our ſouerane lordis Reſpett, gevin and grantit to him be his Maieſtie, vnder the Previe Seill, for the ſaid Slauchter, for

the space of nyntene yeiris eftir the dait thairof; quhilk is of dait, at Halyrud-hous, the xxiiij day of Januar, I^m.Vj^c. yeiris; and in respect thairof, allegit, that the said Dittay could nawayes be put to the knowledge of ane Assyse, for the said Slauchter.—To the quhilk it was answert be the Aduocat, that the Respett is null, becaus, conforme to the Act of Parliament, na Respett nor Remiffioun can be grantit without satisfactioun of partie; and this persewar nocht being satisfet, the Justice aucht to put the pannell to the knowledge of ane Assyse.

THE JUSTICE, nochtwithstanding of the Aduocattis answert, eftir reiding of the Dittay and Respett aboue specifeit, Admittis the said Respett; and ordanit the pannell to find caution to satisfie the partie persewar, conforme to the lawis of this realme; but preiudice alwayis of his lauchfull defenss: Quha, for obedience of the said Justice ordinance, stand, with him selff, Alexander Guthrie ffeiar of that Ilk, cautioneris, &c.

High Treason — Tyrannical Oppression of the Inhabitants of Orkney and Zetland, &c.

[As the subsequent Trials of PATRICK, *second* EARL OF ORKNEY,¹ and of ROBERT STEWART² and others, contain the most ample information relative to the infamous and almost unparalleled cruelties and oppressions committed by this tyrannical individual, against the unoffending Inhabitants of Orkney and Zetland, it is unnecessary, in this place, to anticipate the extraordinary circumstances which are there detailed. The Editor has been at much pains to procure the most authentic Documents, in illustration of these very remarkable Trials; to which the reader is referred. They contain the fullest and most minute accounts of the shocking atrocities committed by this savage and relentless Noble, whose life, estates, and honours, were at length forfeited, in atonement, so far, for his frightful crimes. He was beheaded at the market-cross of Edinburgh, Feb. 6, 1614.]

Aug. 2.—PATRIK EARLE OF ORKNAY LORD ZEITLAND, &c.

Dilaitit of certane Treffonable crymes, at lenth specifeit and sett down in our fouerane Lordis Letteris, vnderwritten :

FOLLOWIS *the tennour of the Letteris* (DITTAY.)

JAMES, be the grace of God, King of Grit Britane, ffrance and Ireland, defender of the faith. To our Louittis [Johnne Blinfull, Ilay Herauld] Messengers, our schereffis in that pairt, coniunctlie and fenerallie, speciallie constitute, greting. fforfamekill as it is hunlie meanit and complenit to ws be our trustie and weilbelouit counsalour Sir Thomas Hammiltoun of Bynn timer, kny^t, our Aduocat, for our intreis, vpone PATRIK, ERLE OF ORKNAY, Lord Zeitland, &c. : THAT quhair, it is expresse statute, ordanit, and obseruet, be our lawis and Actis of Parliament of this our realme, and be the Cownoun Law and consuetude inuolabillie obserued in all Christiane and ciuile Nationes, that quha euir

¹ See Feb. 1, 1615.

² The Trial of Robert Stewart, 'base sone to vniq^{le} Patrik, lait Erle of Orknay,' and others, will be found under Jan. 5, 1615, of the present Collection.

dois Treafone aganis the Kingis perfone, or his Maieftie; or vſurpes vpone thame his ſouerane authoritie, in poyntis of royall ſoueranitie, ſalbe pwneiſhed as Tratouris. AND trew it is, and of verritie, that the ſaid Patrik, Erle of Orknay, altogidder vnmynndfull of that dewtie, quhilk, be the bandis of nature, ſubiectioun, and allegiance, he aucht¹ to ws, and infinite fauouris and benifeitis reſſaut be him frome ws, hes, be him ſelff, and vtheris in his name, of his cauſeing, command, reſſet, aſſiſtance, and ratihabitoune, in contempt of ws and our auctoritie royall, committed and perpetrat the moſt (cruel) and trefoneable crymes following, at the tymes and in maner vnderwritin: And was and is airt and pairt of the ſamyn. IN the firſt, the ſaid Patrick, Erle of Orknay, be him ſelff, his deputis, Magiſtrattis, and Judges, appointed and depute be him, in the offices of Schereſchip, Stewartrie, and Bailzerie of our ſchereſdome and biſchoprik of Orknay, and lordſchip of Zeitland, *reſpectiue*, of his cauſing, command, aſſiſtance, and ratihabitoune, monethlie and ilk moneth, in the yearis of God I^m.V^c. fourſcoir nyne, 1590, 1591, 1592, 1593, 1594, 1595, 1596, 1597, 1598, 1599, 1600, 1601, 1602, 1603, 1604, 1605, 1606, 1607, 1608, 1609, and ane thouſeand ſax hundreth and ten yeiris, at the leiſt in ane or vther of the ſaidis monethis and yeiris, perſewed, accused, proceidit, and pronouncd dyuerſe decreittis and ſentences aganis vmq^{le} Sir Patrik Bellenden of Evie, kny^t, ... Balfoure of Montquhanie, Robert Menteithe of, Williamne Bannatyne of Gairſay, ... Sinclair 3ounger of Etha, ... Bruce of Cwltmalundie, Henrie Wardlaw his ſervand, Adame Mudie,² with mony vtheris our faithfull and obedient ſubiectis of the countreyis of Orknay and Zeitland, accoirding to lawis treſſonabillie maid and practized be him ſelff, direct contrair and repugnant to the lawis of our realme, and Actis of our Parliament, maid be ws and our maiſt noble progenitouris, Kingis of this our realme, to quhome only the power to mak lawis belongis, as ane peculiar poynt of our and thair regall ſoueranitie; and thairby decernit thame to haif committit capitall and treſſonable crymes; and of his awin preſumptioun and vſurpatioun of our authoritie royall, without ony warrand of ws, hes treſſonabillie diſpenſit with the poyntes of death, and ordanit the ſaidis perſones quha war convict and condemned, in maner foirſaid, only to be baniſhed furth of the ſaidis boundis of Orknay and Zeitland; and hes treſſonabillie adiudget thair landis, guidis and geir to be fforfaltit and eſcheit to him ſelff. AS ALSO, the ſaid Patrik, Erle of Orknay, be him ſelff and his foirſaidis, in the monethis and yeiris of God foirſaidis, att the leiſt, in ane or vther of the ſaidis monethis and yeiris, treſſonabillie perſuadit, induced, counſallit, and commandit Williamne Sinclair of Etha, Henrie Sinclair of Tenquhie, Mr Robert Henderſoun, Williamne Irwing of Saba, and mony vthir gentilmen of the ſaidis countreis of Orkney and Zeitland, to

¹ Owes.² A blank of about ſix lines is left here in the Record.

subferyve and delyuer to him ane Band callit Band-mutus,¹ and thairby obleife thame felffis and thair airis, that thai fould ferue and mantene him aganis quhat-fumeuir perfones, without ony referuatioun of ws;² and that thay fould nevir heir nor know his hurt or fkaith, bot fould reveil it within tuentie foure houres, without ony exceptioun of impossibilitie or diftance of place, contrarietie of wind, wedder, or vther impediment; vnder the pane of tynfell³ of lyfe, landis, and guidis; contening alfo this claufe, ‘that gif it happin that be contravening of this Band, be ony of the faidis subferyveris, fould (fall) nocht cum to be faid Erles knowlege, quhill⁴ eftir the committeris deceife, it fould (fall) be leifum to him to try the famyn eftir pair daithis aganis pair airis, and pwneife pair faidis aris as he mycht haif done the principall offendour: And that the faid probatioun of pair contravening of the faid Band fould (fall) be fufficient be tua witneffis: Bindand lykwayis the faidis Gentilmen and vtheris of the cuntrie to be judged be the faid Erle; and nevir to feik to King, Counfell, nor Sefsioune!’ Quhilk Band the faid Erle hes debaited to be lauchfull, and hes confest the refflaucing and haveing thairof; althocht it be maift vnnaturall, uniuft, tyrannicall, impoffible, and treffonable; bindand men to impossibilities, and inioyning to thame, in caice of contraventioun, the paynes of Treafone, ffor naiked conceilling and nocht reveilling his fkaith, generallie, in ony matter; it being of verritie, that no man hes power to preferyve or exact fuch paynes, bot only fouerane poyntes, and that in matteris treafonable allanerlie. Quhairby, the faid Erle hes manifetlie and treafonable ufurped vpone him our royall authoritie and princelie power, in poyntis of our abfolute foueranitie. LYK AS, the faid Patrik Erle of Orknay hes treffonable tane vpone him, in the faidis yeiris and monethis, at the leift in ane or vther of thame, to call and perfew befor him and his pretendit deputtis and Judges, in his pretendit Jurisdictiones of Orknay and Zeitland, Adame Mudie, and many vtheris our frie and obedient fubiectis; and eftir his pretendit maner, haifing accused and convicted thame of dyverfe crymes, hes nocht only pronounced aganis thame the Sentence of Banifchement, and fforfaltour to him felff of thair landis and guidis; bot thaireftir componed, tranfacted, and agreid with thame, and treafonable vfurped our royall authoritie and fouerane power, be Remitting to thame the faidis capitall crymes; quhilk no man hes power to do, within this our realme, bot the King and fouerane of the fame. AS LYKWAYIS, the faid Erle, bereifing our faithfull fubiectis of the benifeit of

¹ Query, *Band-mutus*? A bond for mutual protection and defence, secretly and solemnly binding the obligants to maintain each other, in their quarrels, ‘against all deadly.’ These illegal engagements were formally put down by various Acts of Parliament; as ‘Bonds of Manrent’ were the principal means of encouraging and keeping alive those deadly feuds which disgraced the country, and rendered the state of society in Scotland very insecure, and in many instances almost intolerable. ² Without even reserving their lawful allegiance to the king. ³ Loss. ⁴ Until.

our pease and generall protectione, and the fredome of thair travelling and traffique be sea and land, hes, in the yeiris and monethis foirfaidis, att the leift in ane or vther of thame, dischargd the passageis and ferreis of Orknay and Zeitland, that nane sould haif entreis or outgoing furth thairof, without his Pasport and Licence; and did incarcerat, in stokis and irnes, the servandis of James Stewart of Gramesay, for transpoirting of Robert Menteithe his guidbrother,¹ without his licence; and causd incarcerat the servandis of Frances Mudie, for transpoirting thair said maister;—the men of Sowna, for transpoirting Williame Bannatyne;—and the men of Flottay, for transpoirting of, thair maister; held and detenet thame captiues and prissoneris, in irnes, stokis, clois-prissone and firmance, dyuerse dayis and oulkis;² vsurpeing thairby, most tressonablie, our authoritie royall, and bereifing our lauchfull subjectis of the vse and benifite of thair natie libertie, dew to thame, in thair frie passage and traffique, vnder our peace and protection, throw all the pairtis of this our kingdome, be sea or land. AND nocht content thairwith, the said Erle, leifing na foirt of extraordinier Oppressioun and tressonable violence vnpractized aganis the saidis Inhabitantes of Orknay and Zeitland, at the tymes perticulerlie aboue reherfet, at the leift in dyuerse of the monethis and yeiris foirfaidis, hes compellit the maist pairt of the gentilmenis tennentis of the saidis contreyis of Orknay and Zeitland to work to him all maner of work and laubour be sea and land, in rolling³ and failling his schipis and boittis, working in the flane-querrel,⁴ wynning and beiring furth thairof stanes and red furth thairof, laidning his boittis and schelopes⁵ with stane and lyme, and loifing the same, biging his park dykes, and all vther foirtis of ferveill and paynefull laubour, without ather meit, drink, or hyre.⁶ AND, to conclude the vtter rwyne of the possessouris of the saidis landis and Yles, hes, in the saidis yeiris and monethis, att the leift in dyuerse of the same, imposed, exacted, and tressonabillie vplifted frome thame, dyuerse grit and exorbitant taxationes and impositiones, quhilkis na man may lauchfullie do, within this our realme, bot We, of our souerane power allanerlie; vsurpeand thairby, maist tressonabillie, vpone him, our authoritie royall. FINALLIE, the said Erle, in the saidis monethis and yeiris, at the leift in ane or vther of thame, hes tressonabillie discharget the saidis Inhabitantis of Orknay or Zeitland, to by or sell meill, malt, meit, drink, fische, flesche, butter, nolt, scheip, or ony vther commoditeis, without his Licence, vnder grit penalteis; lykas, he

¹ Brother-in-law.
 lops; small vessels.

² Weeks.

³ Rowing with oars.

⁴ Stone quarry.

⁵ Shal-

⁶ This inhumanity of the Earl of Orkney appears, by existing documents, to have been carried to the most frightful excess—and the lives of the unfortunate natives rendered utterly wretched, worse than the condition of galley-slaves, or that of the Christian captives in Barbary—being only paralleled by the ‘Egyptian bondage and oppression of the children of Israel, under King Pharaoh!’—Reference may be made to the Trials and Documents before quoted.

hes oft and dyuerse tymes, with all rigour, exacted the saidis penalties aganis findrie of the saidis Inhabitantis, for thair lauchfull bying and felling of thair commoditeis and necessaris without his licence. **QUHILKIS** Treasonable crymes aboue writtin, and ilk ane of thame, war done, committed, and perpetrat be the said Patrik Erle of Orknay, be him selff and his complices, and vtheris in his name, of his causeing, command, assistance, and ratihabitounne : And thairby, the said Patrik Erle of Orknay hes committed Treason aganis Ws, and hes tresoneabillie usurped vpone him the poyntis of oure soueranitie, and inseperable partis of our Royal power and authoritie : And he is airt and pairt thair of : And aucht and fould be pwneisched thairfoir, be the paynes of Treason, with all rigour ; in example of vtheris to attempt the lyke, gif sa be. **OURE WILL IS HEIRFOIR**, and We charge yow straitlie, and command, that incontinent thir our Letteris sene, ye pas, and in our name and authoritie command and charge the said Patrik Erle of Orknay, committer of treasonable crymes aboue writtin, in maner foirsaid, vpone fourtie dayis wairning, to find sufficient and responfall cautoun and souertie, actit in our Buikis of Adiornall, that he fall compeir befoir our Justice or his deputis to vnderly our lawis for the samyn, in our Tolbuth of Edinburgh, the secund day of August nixtocum, in the hour of caus, vnder the paynes contenit in our Actis of Parliament : And that ye charge him personallie, gif he can be apprehendit, and failzeing thair of, at our Castell of Edinburgh, quhairin he hes his remaning for the present, and be oppin proclamatioun at the mercat croce of our burgh of Edinburgh, to find the said souertie actit, in maner foirsaid, within sax dayis next aftir he be charget be yow thairto : vnder the pane of rebelloun, and putting of him to our horne. The quhilkis sax dayis being by past, and the said souertie nocht being fundin, that ye incontinent thaireftir denunce the said Patrik Erle of Orknay our rebell, and put him to our horne, and escheit and inbring all his moveabill guidis to our vse, for his contemptioun ; and caus Register thir our Letteris, with your executiones thair of, within fyftene dayis thaireftir, conforme to our Act of Parliament made thairanent : And gif he find the said souertie, that ye summond ane Assyse heirto, nocht exceeding the number of fourtie five persones, quhais naines ye fall ressaue, in Roll, subscryuit be the compliner ; ilk persone vnder the pane of ane hundreth merkis. Accordring to Justice. As ye will ansuer to ws thairvpoun. The quhillk to do, We commit to yow, coniunctlie and senerallie, our full power, be thir our Letteris, delyuering thame be yow, deulie execute and indorsate agane to the beirar. **GEVIN** vnder our Signet at **EDINBURGH**, the fourt day of Junij, and of our regne the aucht and fourtie thre yeiris, 1610.

Ex deliberatione Dominorum Consilij.

J. BANNATYNE.¹

¹ Writer to the signet, and nearly related to the now celebrated George Bannatyne.

FOLLOWIS *the tennour of the EXECUTIOUNE*¹ *of the saidis Letteris.*

VPOUN the tuentie day of Junij, the 5eir of God I^m. fax hundreth and ten 3eiris, I JOHNE BLINSELLIS, Yla Herauld, past, at command of thir our fouerane lordis Letteris, within writtin, to his Maiesteis CASTELL OF EDⁿ; and thair, with my displayit coit of airmes, and be found of trumpet, foundit be Siluester Ramfay, trumpeter, I commandit and charget PATRIK, ERLE OF ORKNAY, personallie apprehendit, within the said Castell, and delyverit to him ane just and autentik coppie of the saidis within writtin Letteris, subferyuit with my hand, to find sufficient and responfall caution and fouertie to the Justice Clerk and his deputtis, actit in the buikis of Adiornall, that he fall compeir befor the Justice or his deputis, day and place within specifeit, in pe hour of caus, and vnderly the Law for the treffonabill crymes within reherfit; within fax days nixt estir this my charge; vnder the pane of rebellious and puting of him to the horne. This I did, estir the forme and tennour of thir our fonerane lordis Letteris, in all poyntis; befor thir Witneffis, George Kirkwoid, Albanie herauld, Robert Logane, messinger, Siluester Ramfay, trumpeter, and Williame Dalglesche, post in Ed^r, with dyuerse vtheris. And for the mair verifcation of this my Executioun, subferyuit with my hand, my signet is affixt.

JOHNE BLINSELL, Ilay Herauld. (L. S.)

Thaireftir, my Lord Aduocat producet ane Warrant of the Lordis of his Maiesteis Secreit Counsail, direct to my Lord Justice, ffor continuation of the said dyet, to the nynt day of August instant. Off the quhilk Warrant the tennour followis.

JUSTICE, Justice Clerk and 3our deputtis. fforamekill as the secund day of August nixtocum, being appointit to PATRIK, ERLE OF ORKNAY, for his compeirance befor 3ow, to vnderly the Lawis, for certane crymes specifeit and contenit in the Letteris raised pairant: Neuertheles, for some speciall consideraciones of his Maiesteis seruice, it is oure Will, and we command 3ou to continew the said dyet, to the nynt day of the said moneth of August nixtocum; conforme to the ordour obseruet in the lyk caiffis: Whearant, thir presentis falbe 3our Warrant. AT EDINBURGH, the xxvij day of July, 1610.

AL. CANCELL^r. DUMBAR.

THE JUSTICE, for obedience of the said Ordinance, continewit the said dyet to the said nynt day of August instant.

My Lord of Orknay takis instrumentis of his compeirance, and declairis quhat

¹ The Legal antiquary will peruse this curious document with much interest. The 'pomp and circumstance' of Ilay Herald, arrayed in his tabard, and attended by Albany Herald, and their respective Pursuivants and Witnesses, after a flourish by one of the trumpeters attached to the Herald's College, personally *apprehends*, as it is legally termed, the Earl of Orkney, and formally charges him, by virtue of the Royal Letters. The present unmeaning and empty form employed by Messengers-at-Arms (being still attached to the Lion King-at-Arms College) bears traces of this ancient ceremony; and still, in the event of the party being *denounced rebel*, the instrument bears this to have been done, 'after three several blasts' of a horn or trumpet, at the market-cross of the head burgh where the rebel (*fictioe juris*) resides, or where his usual domicile is situated. If 'furth' of Scotland, the ceremony is *supposed*, by a practical fiction, to be denounced at the market-cross of Edinburgh, pier and shore of Leith; but in truth, it is effected by the Messenger sitting snugly in his chamber, perhaps up eight or ten pair of stairs, signing an attestation, which is also subscribed by two witnesses, termed *concurrents*. It is in the recollection of some practitioners of the Law, that a few Messengers, of the old school, actually went to market-cross, pier and shore, and in these 'good old times,' every man was 'his own Trumpeter!' A rigidly conscientious person of this class, actually carried a model of a horn in silver, regularly perforated, and at each of the places requisite gave 'three several blasts,' by breathing through this curious instrument, much to the edification of the bystanders, who naturally inferred the man to be insane! But he sternly performed his duty, 'through good report and through bad report,' in despite of all such taunts; and was, moreover, the best employed Messenger of his day.

evir allegit cryme is fett doun in his Dittay, he had sufficient power and authority grantit to him to do the same; nocht granting thame to be crymes: As fall be justifeit be him, in the awin¹ tyme and place.

(Aug. 9.)—MY Lord Aduocat producet ane Warrant of the Lordis of his Maiesteis Secreit Counsell, anent the continuatioun of this dyet appointit for my Lord Orknayis tryell, to the faxtene day of August instant.² The Erle of Orknay askit instrumentis of his entrie; and offerit him selff to the Tryell of the law, for the allegit crymes contenit in the Letteris, nochtwithstanding of the said continuatioun.

(Aug. 16.)—THE JUSTICE Ordanit this dayis dyett, appointit for tryell of my Lord of Orknay, &c. to defert; in respect that my Lord Orknay was nocht presentit upone pannell.

(Nov. 22.)—MY Lord Aduocat producet the summondis, &c.³ Thaireftir my lord Aduocat producet to the Justice, ane Warrant of the Secreit Counsell, direct to him, anent the continuatioun of this dyet to the nyntene day of December nixtocum.⁴ My Lord of Orknay takis instrumentis, &c.

(Dec. 19.)—ANOTHER Warrant is produced for continuatioun of the trial to Mar. 8, 'nixtocum,' dated Dec. 19, 1610: and is signed 'Al. Cancell⁵. Jo. Prestoun. Blantyre. R. Cokburne. Kilfythe.'

[*Mr Robert Cokburne, Justice-Depute.*]

(1611, Mar. 8.)—A WARRANT, dated March 7, 1611, is again produced, continuing the Trial to 'the fyftene day of May nixtocum,' signed by the Chancellor, 'Jo. Prestoun. A. M. Elphinstoun. R. Cokburne.'—My Lord of Orknay takis instrumentis of his entrie, and nochtwithstanding of the quhilk Warrant of the Counsell, offeris him selff to the Tryell of the Law, for ony crymes that can be laid to his charge; disassenting *simpliciter* to all forder continuatioun.

THE JUSTICE Ordanit the said Erle of Orknay to be returnit back agane to his waird.⁵

[*Sir Williame Hairst, Justice-Depute.*]

Treason—Declining the Jurisdiction of the King and Privy Council.

Aug. 29.—MR ANDRO CREICHTOUN, brother to the Laird of Innernytie.⁶

Dilaitit of the Declyning of his Maiestie and Lordis of Secreit CounsaJ Judgement; and thairby committing Treasoun, contrair the Actis of Parliament.

¹ In its *own*, or in its proper time and place.

² The Warrant is *verbatim* the same with the

former; and is subscribed by the Lord Chancellor and Earl of Dunbar. It is dated Aug. 9, 1610

³ The Letters and Execution are repeated. ⁴ In same terms as the others. Dated Nov. 20, 1610,

and signed by 'E. Glencairne. Sanctandrois. Blantyre. Jo. Prestoun. R. Cokburne.'

⁵ An attested copy of the above proceedings, by Sir John Cokburn of Ormestoun, knight, Clerk of Justiciary,

is preserved in the General Register House, with various other papers relative to Orkney. ⁶ See

Arnot's Crim. Trials, p. 37, 67, and 328. The Case of Ogilvie the Jesuite, 1615, in this Collection, &c.

DITTAY against the Pannell.

MR ROBERT CREICHTOUN, broper to the Laird of Innernytie; 3e ar Indytit and accuset: flor-famekill as, 3e, being takin, be directioun of the Lordis of his Maiesteis most honourabill Previe Counfall, and broght befor pame, vpon the fastene day of August instant, to be examinat vpon sum materis concerning his Maiestie and the estait of this his Kingdome, and requyred be thair Lordschipis to geve 3our aith to thame, that 3e sould faithfullie and treulie ansuer to thame, and declair the veritie of sache thingis as suld be demanded of 3ow, 3e treasoncabillie refused to acknowledge his Maiestie and the saidis Lordis of his most honourabill Previe Counfall to be 3our Judges, bot maist treasoncabillie declyned pair judgement: And efter pat pai had put 3ow in remembrance of pat deutie and subiectioun quhilk 3e aucht¹ be our said souerane lord, both in respect 3e was his naturall borne subject within pis realme, and pat 3e war now actuallie resident within pe samyn: And that, be Act of Parliament, maid in pe moneth of May, the 3eir of God I^m.Vc. four scoir four 3eiris, our said souerane lord was declairit, be him selff and his Counfall, to be Judge competent to all persones his hienes subjectis, of quhatfumenir degre, functionn or conditioun thay be of, spirituall or temporall, in all matteris quhairin thay or ony of thame sould be summond or charget to ansuer to; and that nane sould tak vpon hand to declyne the Judgement of his hienes and his successoris, or pair Counfallis, in the premisses, vnder pe pane of Treafone. Lyk as, for 3our better informatioun and resolutioun, pe said Act of Parliament was than schawin and red to 3ow: 3e neuerpeles, vnnaturallie, rebelliouslie, and treasonablie persisting in 3our mischevous purpois, still refused to acknowledge pe Jurisdiction of his Maiestie and his Secreit Counfall. Lyk as, vpon the xxiiij day of August instant, 3e being of new broght befor pe saidis Lordis of Secreit Counfall, and admonished and exhorted to acknowlege and amend 3our treasoncabill offence, and to acknowledge his Maiestie to be 3our superiour, and his hienes and pe Lordis of Secreit Counfall to be 3our lauchfull Judges, and to haif jurisdiction over 3ow, 3e answered, as ofbefoir, that 3e was nawayis better resolved, bot that 3e still abaid be 3our former Deposition and ansueir, that his Maiestie and the Lordis of Secreit Counfall was nocht 3our superiouris or Judges. And sua, 3e haif treasonabillie contemned and declyned the authoritie of our said souerane lord and pe Jurisdiction of his hienes and Lordis of his Secreit Counfall; and pairly haif incurret and sould suffer the paynes of Treafone, to be executed aganis 3ow, in 3our body, lyfe, landis, guidis, fame, and memorie; in example of vtheris: Quhilkis 3e can nocht deny; in respect of your Depositiones, extant, and heir productet in Judgement, subscryuit with your hand, most cleirlye verifeing all pe premisses.

Eftir reiding quhairof, and accusatioun of the said Mr Andro, be vertew of the fame, and Confessioun maid be the said Mr Andro, in judgement, to the Justice, granting the treuth of the said Dittay, and abyding still at his former Depositiones; quhairupone instrumentis was tane be our said souerane lordis Aduocat, the Justice referrit the said Dittay to the knowlege and tryell of ane Assyse of the persones following: Thay ar to say;

ASSISA.

James Stewart of Grameflaw, Robert Menteith of Eglischaw, Thomas Lyell of Murchill, Vthreid McDowell of Mondork,² Mr Robert Henderfoan of Holland, Mr Gilbert Gordoun of Chirnes.³

Quhilkis persones of Assyse being chofin, sworne, and admittit, eftir accusatioune of new agane of the said Mr Andro Creichtoune, be Dittay, of the said treasonable cryme, quhilk in the said Justice and personis of Assyse awin pre-

¹ Owed.² Chancellor of the Assize.³ The rest of the Assise, 'mercheandis,' &c.

fens and audience of new agane was grantit and confest, judicillie, be the said Mr Andro to be of verritie; the said Sir Thomas Hammiltoun, for forder verificatioun of the said Dittay, producet the said Mr Andro Creichtones Depositiones, subferyuit with his hand, in presens of the Lordis of his Maiesteis most honourabill Previe Counfall, and repeittit thairwith the Act of Parliament, the pannellis Judiciall Confessioun, maid in presens of the Justice and Assyse; and thairupoun askit instrumentis; and protestit for Wilfull Errour aganis thame, gif thai acquit him.

VERDICT. That the said MR ANDRO was Culpable and convict of the trefsonable Declyneing of his Maiestie and Lordis of his hienes Secreit Counfall to be his Judges, accoirding to his accusatioun aboue writtin, contenit in his Dittay, sufficientlie verifeit to thame be his Depositiones, produceit to thame, subferyuit with his hand; as also, be his Judiciall Confessioun, maid in the Justice and thair presence.

SENTENCE. To be tane to the mercait croce of the burgh of Ed^r, and thair to be hangit and demanit as ane Tratour; and all his landis, heritages, tenementis, annuelrentis, takis, steidingis, &c. to be fforfalt and escheit to our souerane lordis vs^e, as culpable and convict, &c.¹

[*Mr Alexander Coluill, Justice-Depute.*]

(1611, Feb. 27.)—THE quhilk day, Mr Andro Creichtoun being, at command of the Counfall, brocht furth of waird out of the Tolbuth of Ed^r, and presentit vponne pannell, to heir Dome of new agane pronuncet vponne him, the Justice ordanit the Counfallis Warrant vnderwrittin, delyuerit to him be my Lord Chancellor, to be oppinlie red in judgment, viz.

JUSTICE, Justice clerk, and your deputtis. Foramekill as althocht Dome and Sentence was pronuncet aganis Mr Andro Creichtoun, proper to pe Laird of Innernytie, ordaning him to haif bene tane to the place of his Executioun, and pair to be hangit and vperwayis demanit as ane tratour, for his trefsonabill declyneing of the Kingis Maiestie and his Counfallis judgement, and for certane vtheris trefsonabill crymes specifeit and contenit in the Sentence and Dome of Convictioun pronuncet aganis him: Neuertheles, it hes now pleist the Kingis Maiestie, out of his accustomed gracious dispositioun to clemencie and mercie, to mitigat the rigour of the Sentence pronuncet aganis the said Mr Andro, and to Ordane him to be Banischet his Maiesteis haill dominions; and nevir to retorne agane within the same, during his lyve tyme, vnder the pane of deid, to be execute vponne him without forder dome or Sentence to be pronuncet aganis him. THAIRFORE, zow fall, vponne pe sicht heirof, appoint and set ane Justice Court, caus pe said Mr Andro to be exhibit befoir zow, and pronounce new Sentence aganis him, conforme to his Maiesteis gracious fanour, clemencie and mercie, Ordaning him to be BANISHED his Maiesteis haill dominions, and nevir to retorne agane within the samyn, during his lyfytyme, vnder the payne to be Hangit quhill he be deid, without ony forder dome or Sentence to be pronuncet aganis him; and that, for contravening of pis present Sentence. EFTIR the pronouncing quhairof, zow fall caus retorne him bak agane to his waird, thairin to remane, quhill the commoditie

¹ ' Mr. The Dittay, with the pannellis Depositiones, gevin vp to my Lord Aduocat the day foirsaid.'

be had of some schip going out of the cuntrie; quhairby he may be caryed to hir be pe Magistratis of Ed^r, and sua fend away. And this 5ow failt nocht to do: Whearant pir presentis fall be 5our Warrant. AT ED^r, the xxvj day of Februar, 1611. JAMES R.

The Justice, for obedience of the command thairin contenit, be the mouthe of Alexander Kenmydie, dempster of Court, decernit,¹ &c. Whilk was pronounced for Dome.

[*Sir William Heart, Justice-Depute.*]

Slaughter—Intercommuning with Rebels—Treasonable Theft and Stouthreik, &c.

Sept. 6.—WILLIAME DOUGLAS of Lyncluden and Grenelaw,² (callit *Williame of Pinzerie*,) eldest sone and appeirand air of Williame Douglas of Baitfurd.

Dilaitet of dyuerse crymes of Slauchter; beiring and weiring of pistolettis; and of the tressonabill crymes of thift committit be him, he being ane landit Gentilman; in manner specifeit in his DITTAY, vnder writtin.

FORSAMEKILL as 3e, haifing confaut ane deidlie feid, rancour, and malice, without ony caus, aganis vmq^{le} Thomas Softlaw, burges of Dumfreis, vpone the fyft day of Apryle, or pairby, the 5eir of God Im.Vj^c. and sewin 5eiris, and haifing convocat with 5ow Johne Cunninghame, 5our seruand, and vperis deboifchet men, 5our complices, to pe number of tuentie perfones, or pairby, all bodin in feir of weir, with lance-stalfis, suordis, quhingeris,³ and with hagbuttis and pistolettis, prohibeit to be borne or worne be dyuerse Actis of Parliament, came to the Brigend of Dumfreis, quhair the said vmq^{le} Thomas was, in quyet and sober maner, vnder Godis peax and the Kingis; and pair, 5e fearcelie fet vpone him, and perfewed him for his slauchter, hurt and woundit him with 5our pistolettis, and vtheris wappones foirfaidis, in pe heid, and dyuerse vperis partis of his body; to the effusioun of his bluid in grit quantitie; off the quhilkis straikis and woundis he schortlie paireftir depairtit this lyfe; and sa, was crewallie and vnmerciefullie flane, be 5ou, and 5our saidis complices, of 5our causing, command, assistance, and ratihabitoun; and 5e ar airt and pairt pairof. To the taikin,⁴ that 5e, and 5our saidis complices, being charget to find cautoun to compeir befor pe Justice, and vnderly pe law for pe said Slauchter, 5e past twyse to the horne for pe said cryme, as the Letteris of Hoirning heirwith producet verifeis.—ITEM, 5e ar indytit and accused, as airt and pairt of pe crewall and fellone Slauchter of vmq^{le} Eduard Maxwell of Croftoun, committed at pe Brigend of Dumfreis, vpone the day of September, or pairby, the 5eir of God Im.Vj^c. and aucht 5eiris, be 5ow pe said Williame Douglas of Lincluden, Johnne Schitlingtoun, 5our servand, Johnne Greir, suordflipper at the Brigend of Dumfreis, and Johnne Dempster in the College of Lincluden, quho of 5our speciall causing, sending, hounding out, airt and pairt-taiking, resset with the bludie hand, assistance, and ratihabitoun, with pair suordis, lances, and vperis wappones, *invasiue*, invaidit and perfewit pe said vmq^{le} Eduard Maxwell, for his Slauchter, and hurt and woundit him in pe heid, and dyuerse partis of his body, to pe grit effusioun of his bluid. Off the quhilkis woundis he nevir thaireftir convalesced; bot lying in extreame and deidlie payne, be pe space of fyve or sax dayis, in end, vpoun the . . . day of September,

¹ The words of the warrant repeated.

² The family of Douglas of Penzire was descended from George Douglas, the third son of Sir William Douglas of Drumlaurig, who was killed July 22, 1484, near Lochmaben. William of Penzire married Agnes, second daughter of John, sixth Lord Maxwell, (the father of John the seventh Lord Maxwell, whose Treason, escape, &c. form part of this Dittay,) by Lady Elizabeth Douglas, second daughter of David, seventh Earl of Angus. This circumstance explains satisfactorily that part of the Dittay which refers to his resetting, and other transactions with Lord Maxwell, his brother-in-law.

³ A short sword or hanger; a

kind of cutlass. ⁴ In token, proof, or testimony whereof.

or pairby, the 3eir of God 1608 3eiris foirfaid, he depairtit this lyfe; and sua, was crewallie flane be 3ou and 3our saidis complices, of 3our causing, command, refset, assistance, and ratihabitoun: And 3e ar airt and pairt pairof; ffor pe quhilk, 3e haif lyne at pe horne thir tuo 3eiris bygane. 3e ar also Indytit, fforfamekill as pe said Johnne Greir, being tane with the bludie hand, and immediatlie efter pe committing of pe said crewall Slauchter of pe said vmq^{le} Eduard Maxwall, being committit to Waird for pe same, in our fouverane lordis ordiner Priffone and Pledge-chalmer of Dumfreis, and pair keipit priffoner in the irnes, be the space of foure dayis, the said Johnne Schitlingtoun, 3our fervand, at 3our command, and be 3our speciall convoy and assistance, haveing provydit him self of gavillokis,¹ craw-irnes,² fyles, and vperis work-lowmes,³ furneist and preparit to him be 3ou and 3owr meanis, come vpone the . . . day of pe said moneth of September, or pairby, and 3eir of God foirfaid, and in the nyght seafoun brak pe vout and pend⁴ of pe said priffone, and schure⁵ af pe irnes, quhairin the said Johnne Greir was loked, and violentlie and forceable relevit him furth of our fouverane lordis Priffone foirfaid, and cayreid him to 3our duelling hous in Lyncluden, wher 3e refset, keiped, and interteneid him dyuerse dayis, nychtis, and oulkis⁶ paireftir: And sua, 3e ar airt and pairt of the contemptuous, insolent, and violent breking of our fouverane lordis priffone, and taking furth pairof, violentlie and perforce, of the said Johnne Greir, giltie and captiue for pe said crewall Slauchter of pe said vmq^{le} Eduard Maxwall of Corstoun, and of pe wilfull refset, supplie, and intertenement of pe said Johnnie Grier, giltie and fugitiue for pe said crewal Slauchter; and aicht and sould be pwneifched with the lyk and self same paynes quhilk pe law hes preseryved aganis pe said principall malefactour, for his crymes foirfaidis. To the taikin,⁷ that pe said Johnne Grier and 3e war bothe fugitives, and at pe horne, for pe cryme foirfaid.—ITEM, 3e ar indytit of 3our treaffounabill Intercowmoning with JOHNNE sumtyme LORD MAXWALL,⁸ in the toun of Dumfreis, and in the Castell-3aird pairof, and dyuerse vtheris places within the scherefdomes of Nyddisdail, Annandaill, Kirculdbrycht, and Galloway; and for Refseting and suppleing him in 3our hous of Lyncluden, and vperis 3our duelling places, in pe moneth of December, the 3ear of God I^m.Vj^c. and fevin 3eiris, and in pe monethis of Januar, februar, and remanent monethis of pe 3eir of God 1608 3eiris, at pe leift dyuerse dayis and nychtis of pe said 3eir, eftir that he had committed nottour and manifest Treafone, be his violent and forceable breking Waird furth of pe Castell of Edinburgh, vpone the fourt day of December, or pairby, pe 3eir of God I^m.Vj^c. and fevin 3eiris, and perfewing the Porteris and Keiperis pairof for pair Slauchter, hurting and wounding dyuerse of pame in findrie partis of pair bodeis, to pe grit effusioun of pair bluidis, and perrell of pair lyves; and preiffing, so far as in him lay, treafoneabillie to relief SIR JAMES McCONEILL, detenit in irnes and strait priffoun within pe said Castell, for dyuerse odious and treafoneabill crymes;⁹ ffor pe quhilkis manifest Treafones, the said Johnne Lord Maxwall was nocht only denuncet rebell and tratour, and all our fouverane lordis legis discharget, be Proclamatioun, to intercowmone with, refset, or fuplie him, vnder pe panes of law; bot also, he sforsaltit, be Decreit of Parliament, for pe samyn. To the taikin, that 3e, being dyuerse tymes charget to compeir befor pe Counsell, to anfuier for pe saidis crymes of Refset, supplie, and intercowmoning with pe said Johnne, sumtyme Lord Maxwall, 3e, knowing 3our awin giltines, disobeyit the charge, and past to pe horne; at the quhilk 3e haif lyne continuallie senfyne vnrelaxit.—ITEM, 3e ar indytit and accuset, sforsamekill as Johnne Lord Hereis, being directed be pe Lordis of his Maiesteis Secreit Counfall to tak and apprehend 3ow and Eduard Maxwall of Craigtoun, ane nottour rebell and fugitiue, for Thift, Stouth-reif, ffyre-raising, suppleing and assisting my Lord Maxwall, and dyuerse vtheris treasonable crymes, quhilk pe said Eduard him self declared vnto 3ow; the said Lord Hereis, vpone the fyftene day of August lastbypast, cuning, for executioun

¹ A lever used by quarriers of stone, a *pinch* or *prize*.

² Crowbar.

³ Tools.

⁴ Vault and arch.

⁵ Literally *sheared*, as with a reaping-hook.

⁶ Weeks.

⁷ In testimony or proof whereof.

⁸ See

May 13 and Jun. 24, 1609, &c. That nobleman was beheaded, at the Cross of Edinburgh, May 21, 1613. See also Appendix.

⁹ See his Trial, III. 1, &c. Jun. 24, 1609.

of the said directione, to the hous of Johnne Couthird, in Reid-Castell, whear 3e, with pe said Eduard, and dyuerse 3our complices, war then assemblit, and he him selff, and his servandis, commanding 3ow and pe said Eduard, in our souerane lordis name, to be tane with him, and to randir 3our selfis and 3our wappones, 3e treafounabillie disobeyit pe said charge, and with 3our fuordis, pistolettis, and vperis vnlauchfull wapponis, invaidit and persewed the said Lord Hereis and his servandis for pair Slauchter, hurt and woundit Johnne Geddes, Johnne Couthird, and dyuerse vtheris of thame, in sindrie pairtis of pair bodeyis, to the grit effusioun of pair bloudis, violentlie and forceablie hinderit thame to tak the said Eduard Maxwell, rebell, releifit him fra pame, and gaif him meanis and occasioun to escaip furth of the said hous; and sua, violentlie and treafounabillie withstuid the said Lord Hereis, haifing the Counfallis command and direction to tak 3ow and pe said Eduard Maxwell, standing rebell for Treafone, as said is; and assistit and tuik pairt with him, in his treafoneable withstanding of the said Lord Hereis, and in his treafonable persewing of pe said Lord and his companie, for pair Slauchter, and had ane pistolet vpone 3ow at pat tyme: And 3e ar airt and pairt pairof; as 3our awin Depositionn, subscryuit with 3our handis, and pe Depositionn of sum of thais that war present at 3our apprehensioun, cleirly verifeis. ITEM, 3e pe said Williame Douglas of Grenelaw and Lyncluden, eldest sone and appeirand air of James Douglas of Baitfurd, 3e ar indytit and accused, fforfamekill as 3e, being ane landit Gentilman, and heritable proprietor of the saidis Landis of Grenelaw and Lyncluden, and dyuerse vperis landis and heritages, haif committed the treafonable crymes of Thift and Stouthere-reif vnderwritin, be 3our self and 3our complices, and vperis in 3our name, of 3our causing, command, ressett, assistance and rathabitounn, quhairof 3e war and ar airt and pairt, that is to say, ffor 3our coming to David Welfches chalmer, in the place of Grenelaw, and tressonabill breking vp, perforce, of his lettrone¹ pair, and steilling furth pairof xxxv li. money, or pairby, quhairof pair was tuo half ducattis, pertening to the vmq^{le} Proveist of Lyncluden, his maister, quhairof 3e sone pairestir wiffillit² ane half ducat with Alexander Gordoun, violor in Wigtoun, for fyve merkis; quhilk being tryit and maid nottour to all pe Proveistis servandis and hail nychtbouris in the countrie, and cuming at last to the Proveistis awin knowlege, he was so heichlie offendit with 3ow for pe same, that he boifit³ aper to droun⁴ 3ow, or at leist to put 3ow af pe cuntrey, and nevir to do 3ow any benefeit or guid; quhilk 3e heiring pairof, be pe counsell of the said David Welfche, past in to pe Proveist chalmer in Grenelaw, quhair he was lyand in his bed, and pulling 3our breikis and schankis⁵ af 3our kneis, 3e sat down befor him vpone 3our bair kneis, cravet God and him pardoun and forgevenes, for pat 3our offence, and swoir and promiseit to him nevir to do pe lyk thairestir. Quhilk treafonable Thift was committed be 3ow, about nyne 3eir fyne, or pairby; quhilk 3e can nocht deny; lyk as the samyn is cleirly verifeit be pe Depositionnes productet. ITEM, 3e ar indytit and accused for pe trefonable Steilling, conceilling and away-taking frome Thomas Fergusoun, seruitour to pe said vmq^{le} Proveist of Lyncluden of an Angell of gold, and sum siluer, furth of his purse, in the 3eir of God Im.Vjc. and tua 3eiris, or pairby. ITEM, 3e ar indytit and accuset for the treafonable Steilling, conceilling and away-taking, vnder silence and cloud of nycht, of tuentie-aucht pecis of gold fra Johnne, sumtyme Lord Maxwell, committed be 3ow in the place of Langholme, quhair 3e war lyand in the chalmer with the said Lord Maxwell, in the 3eir of God 1605 3eiris, or pairby. To pe taikin, 3e wiffillit ane of pe saidis peces of gold, being ane double-doubill pistolet, in an oisler-hous beyde the Langholme; and 3e was pairestir apprehendit, and challanget wiffelling sum vper of pe saidis peces, in Dumfreis: ffor pe quhilkis crymes, 3e war indytit and arreistit to pe Justice Court haldin be my Lord Erle of Dumbar, his Maiesteis Heich Commissioner, in the Middle schyres, in July, 1609 3eiris; and was

¹ Literally a reading-desk or pulpit where prayers are read, from O. Fr. *letrin*, *lectrin*, *lutrin*. It is frequently employed to signify a box, chest, or desk for holding papers, &c.

² Exchanged; 'changed'; sometimes spelt *quhissellit*.

³ Threatened, as Lord of the Regality, and entitled to sit as Criminal Judge on his trial.

⁴ A common punishment, in the inferior Judicatories, for Theft, &c.

⁵ A kind of long hose.

fugitive pairfoir. ITEM, 3e ar indytit and accuset for 3our treafonabill breking of Johnne Grahame, in the Gait, his kift,¹ vnder clud and filence of nycht, and maisterfull and thiftious Steilling and reveing, furth of pe said kift, of flourtie-foure pundis, being all foure-merk-peces, pertening to pe said Johnne, committed be 3ow in pe 3eir of God 1601 3eiris. ITEM, 3e ar indytit and accused for 3our tressonabill airt and pairt of pe steilling, reifing, and away-taking and conceilling of ane kow, pertening to Meg Miller in Croftis, with pe haill insight of hir hous; committed be 3ow in Julij lastbypast: To the taikie, 3e brocht ane kift full of meill to (and?) ane lynning wob of hiris,² and fauld (thame?) in Johnne Grahames of the Gait. ITEM, 3e ar indytit and accuset for 3our treafonable Stouth-reif of ane naig, pertening to Robert Symontoun at pe Mylne of Corsemichell; committed in July 1610, lastbypast: To pe taikin, 3e wald nocht restoir pe naig eftir he was tryit vpone 3ow, quhill³ 3e gat fyve pundis money frome pe said Robert for pe samyn. ITEM, 3e ar indytit and accuset for 3our Maisterfull and treafonable Stouth-reiff of ane naig from Johnne McGill in Grenelaw, in August, 1610: To pe taikin, 3e was rydand on him, immediatelie befoir 3e was tane. ITEM, 3e ar indytit and accuset for 3our treafonable Stouth-reif of ane kow, frome Robert Welsche in Dillovodie; committed three 3eir fyne, or pairby; quhillk was than instantlie flane and disponit vpone in 3our hous. ITEM, 3e ar indytit and accused for 3our tressonabill Stouth-reif from Johnne Jehuneftoun in Lyncluden, of ane kow, tua 3eir fyne, or pairby; and caufit flae and dispone vpone hir, in 3our hous, at 3our plefour. ITEM, 3e ar indytit lykwayis, for contravening of our fouerane lordis Actis of Parliament, in beiring and weiring hagbuttis and pistolettis vpone 3our persone, and in 3our companie, oppinlie, outwith houffis, within pe scherefdome of Drumfreis and stewartrie of Kirkcaldubrie; and pat monethlie and daylie; at the leist, in ane or vper of pe monethis, in pe 3eiris of God Im.Vjth. fevin, 1608, 1609, 1610 3eiris: To the taikin, 3e was tane with ane pistolet vpone 3ow, quhillk 3e presentit to Johnne Geddes at 3our talking. ITEM, 3e ar indytit for Cowmone Thift, Cowmone Resfett of thift, outputing and inputting of thift, fra land to land, fra cuntrie to cuntrie, baith auld and new, notourlie knowin. BE the quhillkis Treafonable crymes aboue writtin, and ilk ane of them *respectiue*, committed be 3ow, and vperis in 3our name, of 3our causing, command, assistance and ratihabitoun, as said is, and quhairof 3e war and ar airt and pairt, 3e haue deferuet and incurrit the paines of Treafone, quhillkis sould be execute vpone 3our body, lyfe, landis and guidis: And 3e haif sforsfaltit to the Kingis Maiestie, 3our haill landis, steidingis, rowmes, possessiones, takis, contractis, bandis, reuerfiones, richtis, securiteis, hoip and appeirance of successioun, and all vperis landis, rychtis, guidis and geir quhatsumeuir, moveabill or vnmoveabill, quhillk 3e had, or quhillk 3e mycht haif appertenit, or ony wayis haif befallin to 3ow, and pe samyn sould be adiudget to haif befallin to our said fouerane lord, and to appertene to his hienes, and to remane with him, his croun and successouris, now and in all tyme cuming.

Eftir production of the said Dittay, be our said fouerane lordis Aduocat, the said Williame Douglas was put to the tryall of ane Assyse of the persones following, viz.

ASSISA.

Williame Creichtoun of Ryhill,	Thomas Hunter in Burne,	George Mcne in Lyncluden,
Alexander Maxwell of Logane,	Williame Douglafs of Lache,	Thomas Welsche thair,
Johnne Broun of Mullennis,	James McRerik of the Kerne,	Niniane Myller in Ryhill,
James Mairtene in Airdis,	Johnne Greirfoun of Ingliftoun,	Hew Douglas of Belliebocht,
Jo ⁿ Fairies in Carle of Kynneill,	Johnne Carmichell elder in Spothe,	Rodger Padzeane of Newtounne,

My lord Aduocat askit instrumentis of the fweiring of the Assyse. (1.) My lord Aduocat producet the tua Letteris of Hoirning for the Slauchter of vmq^{le} Thomas Softlaw, togidder with ane Dittay aganis the pannell, and publicatioun

¹ Box, chest.² Hiers.³ After you was publicly accused of the theft, until you got L.5, &c.

of his absence, and Declaratioun of his being fugitiue fra the Justice Court, haldin at Drumfres be my Lord Dumbar, for the said Slauchter. (2.) Lykwayis, my lord Aduocat producet tua Hoirningis aganis the pannell, for the Slauchter of Eduard Maxwall of Trostoun. (3.) For verificatioun of the *thrid* Article of Dittay, respecttis the tua Hoirningis producet. (4.) ffor verifeing the fyft (*fourth*) Article, my lord Aduocat repeittis the notorietie of my Lord Maxwallis fforfaltour, and producet tua Hoirningis aganis the said Lord Maxwall, togidder with Letteris of Publicatione aganis all our souerane lordis legis, that nane shuld reffet him : As also producet Letteris direct aganis the pannell, quhairby he was charget befor the Counsell, and past to the horne for disobediencie. (5.) ffor verificatioun of the *fyft* Article, repeittis the Judiciall Declaratioun maid be my Lord of Dumbar, anent the Warrant gevin to my Lord Hereis, for apprehending of the pannell and Eduard Maxwall of Craigtoun : And sicklyk, producet Letteris of Hoirning, beiring the said Eduard Maxwall to be fugitiue. (6.) Repeittis, for verifeing the *sart* Poynt, the notorietie of the cryme with certane Depositiones. (7.) ffor verificatioun of the 7 Poynt, producet his Depositiones, togidder with his Indytement at the Justice Court of Dumfres, and of his being fugitiue thairfra. (8.) ffor verificatioun of the Pistolettis, repeittis his Deposition producet. (9.) ffor verificatioun of the quhilkis thiftious crymes, tressonable committit be the pannell, and that thairin he hes committit Tressone, my lord Aduocat producet the pannellis Infeftment of the Landis of Lyncluden, togidder with ane Contract subferyuit betuix him and the Lard of Lochinvar, subferyveing him self to be 'ffear of Lyncluden ;' and repeittis that Act of Parliament, beiring Landit Gentilmen, committing Thift, to incur the cryme of Treacone.

Eftir reiding of the hail poyntis of Dittay, the pannell confessis the samyn to be of veritie, for ffear of his lyfe ; and thairfoir becumis in his Maiesteis Will.—My Lord Aduocat repeittis the writtis producet, and the Act of Parliament maid against the committeris of Thift, be(ing) landit Gentilmen ; and in respect thairof, Protestis for Wilfull Errour against the Assyse, gif they will acquit.—My lord Aduocat declairit to the pannell, that nochtwithstanding of the admitting of the Assyse, he is content, gif it be admittit be the Justice, that the pannell fall be reponit to his defensis, and haif the assistance of his prelocutouris to that effect ; and lykwayis, to obiect aganis the persones of Assyse, gif he hes ony lauchfull exceptioun to propone aganis thame, albeit it be nocht the forme of this Judgement : And thairupoun askit instrumentis. Nochtwithstanding of the quhilk offer maid be my lord Aduocat, the pannell offeris him self in his Maiesteis Will, for the hail crymes contenit in his Dittay.

VERDICT. The Assyse, be the mouth of Williame Creichtoun of Ryhill, chancellor, ffand, pronuncet, and declairit the said Williame Douglas of Lyncluden, to be ffylet, culpable and convict of the Reffet with the bludie hand of Johnne

Greir, principall committer of the Slauchter of vmq^{le} Eduard Maxwall of Trof-toun, immediatlie eftir the committing thair of: And ficlyk, to be ffylet, culpable and convict of the haill crymes of Treafone, and vtheris crymes at lenth fpecifeit and fett down in his Dittay, aboue mentionet.

SENTENCE. The Juftice, be the mouthe of Alexander Kennydie, dempfter of Court, decernit and ordanit the faid Williame Douglas to be tane to the Mercat-croce of Edinburgh, and firft, his richt hand to be ftruikin frome his body; and thaireftir, the faid Williame to be hangit at the Mercat-croce vpone ane gibet, quhill he be deid: And all his landis, heritages, &c. to be fforfaltit and efcheit to our fouerane lordis vfe, as giltie and culpable of the faidis treffonabill crymes:—Quhilk was pronuncet for dome.

Sorcery — Witchcraft — Murder.

Sep. 7.—GRISSELL GAIRDNER, relict of vmq^{le} Johnne Baird, burges of Newburgh.

Dilaitit of certane crymes of Witchcraft and Sorcerie, committit be hir, in maner and at the tymes fpecifeit in hir DITTAY following.

PERSEWARIS, Mr Robert Foullis, fubftitute to our fouerane lordis Aduocat; Alexander Wentoun in Newburgh, for himfelf, and as Informer.

PRELOCUTOR for the pannell, Mr Johnne Ruffell, (Advocate.)

IN þe FIRST, for on-laying, be Witchcraft and Inchantment, of ane grevous difeas and feiknes vpone the faid Alexander Wentoun; quhairin he lay in a feirful madnes and ffurie, þe fpace of ten oulkis¹ togidder; and in end, for af-taking of þe faid difeas and grevous feiknes af him, be certain directiones gevin, and vperis devillifche practizes vset be hir, for his recoverie; committit be hir in the moneth of Februare lafbypaft. ITEM, for hir devillifch Sorcerie and Witchcraft, practizet be hir, in laying on the lyk feirfull difeas and vnknawin feiknes vpone Williame Anderfoune, wricht in Newburcht, for certane allegit injuries done be him to Andro Baird, hir fone; in the quhilk grevous feiknes he continewit the fpace of ten dayis togidder, tormentit in maift feirfull maner; and af-taking of þe fame feiknes, be hir, be repeiting thryfe of certain woirdis, quhilk fcho termet prayeris. AND ficlyk, for Bewitching of ane kow, pertening to þe faid Williame, quhairthrow þe haill milk that fcho þaireftir gaif was bluid and worfam;² committed be hir devillrie and Inchantment, in the monethe of Maj lafbypaft. ITEM, for þe Bewitching, be hir devillrie and Inchantment, of James Anderfoune, fone to Margaret Balfour in Newburcht, in on-laying of ane grevous feiknes and difeas vpone him; quhair of, in ane grit ffurie and madnes, within foure dayis eftir on-laying þair of, he deceiffit; and þairthrow, for airt and pairt of his Mur-

¹ Weeks.

² Blood and corrupted or purulent matter.

thour and deid,¹ committed be hir, in þe 3eir of God I^m.Vj^c. and fyve 3eiris. ITEM, for ane cowmone and notorious Witche and abusfeir of þe people, by laying on of feiknes vpone men, wemen, bairnes, and bestiall; and be geving of drinkis, and vseing of vper vngodlie practizes, for af-taking of þe saidis feikneffis and diseases; and be consulting with the Devill, and feiking of responffis fra him, at all tymes this fourtene or fyftene 3eir bygane, for effectuating of hir devillifch intentiones.

It is allegit be Mr Johne Russell, as ordiner prelocutor, as he allegit, for my lord (Archbishop) of St Androis,² that my Lord Justice can nocht proceed in this matter, aganis the pannell, vnto the tyme a Precognitioun be tane of the cryme of Witchcraft, for the quhilk this pannell is to be accuset; conforme to ane Commissioun gevin to my Lord of St Androis, and certane Nobill men, to that effect.—It is answert be my lord Aduocat, that thair is na sic Commissioun grantit, nather is the Commissioun product; and albeit thair war ony sic Commissioun gevin, the samyn is nawayis derogatorie to my lord Justice Jurisdiction; bot that the pannell man be put to ane Assyse, for the crymes lybellit.

It is allegit be the pannell, that the first pairt of the Dittay is nawayis relevant; nather is the samyn relevantlie qualifeit, bot altogidder friuolus and generall; and thairfoir, can nocht be put to ane Assyse. It is answert be the Aduocat, that the allegiance is nawayis relevant, bot man be repellit, in respect of the Dittay and circumstances thair of.

THE JUSTICE remittis the Dittay to ane Assyse, to be cognosset and tryit be thame.

The Aduocat askit instrumentis of the chesing and swering of the Assyse; And protestis for Wilfull Errour, in caice thay acquit hir; in respect of the notorie of the Dittay, and takinnis³ gewin to ilk poynt of the Dittay, and of the swering of Alexander Wentoune.

It is allegit that *Stevin Philp* can nocht be ressaunt vpone this Assyse, becaus Philpis wyfes guidane⁴ and the persewar Alexander Wentounes mother war sifteris.—The said Stevin Philpis ayth being tane thairupone, declairit thai war sib,⁵ bot knawis nocht how neir of kyn thai war.—*James Durie* repellit be the Justice, af this Assyse, in respect of his declaratioun and ayth gevin thairupoun, that he buir the pannell at na guid will.—It is allegit aganis *Robert Allane*, that he can nocht be admittit Assysfour, becaus Anderfones wyfe, quha is pairtie offendit in the Dittay, and Allane are thridis of kyn,⁶ as was reknit.

THE JUSTICE admittis *Allane* vpone this Assyse, for the haill poyntis con-

¹ Death. ² George Gladstones, who was translated from the See of Caithness, anno 1606; but was not consecrated Archbishop, until 1610. ³ Proofs. ⁴ Grandmother. ⁵ Of kin, consanguinity, or relationship by blood. ⁶ Within the third degree of consanguinity.

tenit in the Dittay, except vpoun the article confaut in preiudice of Anderfone's wyfe allanerlie.¹

It is allegit that *George Henderfone* can nocht be admittit vpoun this Affyse, becaufe the pannell hes Letteris of Lauborrus against him, quhairupoun scho hes gevin hir ayth of hir bodelie harme.—Anfueris, nocht relevant, becaus the Letteris ar raiffit fen² the pannellis apprehensioun for the fact lybellit, and fen the Counfallis ordinance, appointing hir to be tryit.

The pannell, befor the outpassing of the Affyse, takis instrumentis, that na poynt of the Dittay is fuorne to the Affyse, bot³ the first Article, anent Alexander Wentoun, allanerlie.

The Aduocat defyres, for forder informatioun to the Affyse of the pannellis Giltines of the haill crymes lybellit, that the Ministeris⁴ Declaratioun, anent hir lyfe, tred⁵, and conversatioun; as also, David Orme, Bailzie of Newburcht, ayth and declaratioun of that pairt of the Dittay, concerning Anderfones wyfe and bairnis, be ressaute.—It is anfuerit be Mr Johnne Russell, that thair Declarationis can nocht be ressaute, except thai war infert as persewaris in the Summondis.

The pannell protestis that the Declaratioun to be maid be Mr Johnne Caudcleuche, Minister, in this matter, quhairupoune scho is dilaitit, be nawayis respectit or advertit vnto be the Affyse.—*Mr Johnne Caldcleuch, Minister*,⁶ being fuorne maist solemnelie, be the Justice, Deponis, that a fourtene yeir syne this Griffell Gairdner was than suspect to be ane wicket woman, and ane Sorcerer; and be the Depositiones of the Witches execute for Sorcerie and Witchcraft, at Abernethie, Falkland, and Newburcht, scho was reput to be ane manifest Witch; bot becaus thair was na precedent fact qualifeit aganis hir, the Presbiterie thairfoir delayit hir Tryell and accusatioun. And as concerning hir lyfe and conversatioun fen syne, scho hes bene suspect to be ane verrie evill woman; and for hir privat revenge aganis sic as scho buir ony malice vnto, hes vset devillische and vngodlie meanis, be Sorcerie and Incantatioun, to lay on dyuerse grevous diseassis on thame; and speciallie, on the persones set down in hir Indytement; quhairthrow the cuntrie and parochin⁷ quhairin scho duellis hes bene gritlie sclanderit, in suffering sic ane persone vnpwneist: For the quhilk caus, the Presbiterie, efter tryell of the former offences done be hir, alweill to the persones contenit in hir Dittay as vpone dyuerse vtheris that ar nocht nominat thairin, direct the Deponer, as thair Moderatour, to notifie the treuth of the premisses to the Counfall, that sum ordour might be tane anent hir Tryell and pwnischnent.—Quhairupoun my lord Aduocat askit instrumentis.

¹ Only, alone. This remarkable decision of the Justice, however inconsistent with modern practice, was by no means infrequent during the reign of King James VI. ² Since. ³ Excepting.

⁴ Clergyman of the parish of Newburgh.

⁵ Trade; employment; occupation.

⁶ See the King's Letter to this Minister, relative to Gowrie's Conspiracy, in this Collection, II. 317.

⁷ Parish.

VERDICT. The Assyse, for the maist pairt, be the mouthe of Williame Ramfaye, burges of Newburgh, chancellor, ffind, pronuncet, and declairit the said Griffell to be ffylet, culpable, and convict of the haill crymes aboue mentionat.

SENTENCE. The Justice Decernit and ordanit hir to be tane to the Castell hill of Edin', and thair to be wirreit¹ at ane staik quhill scho be deid; and thair-after hir body to be brunt in asches; and all hir moveabill guidis and geir to be escheit and inbrocht to our souerane lordis vse.

Horse and Cattle-stealing.

Oct. 23.—GEORGE BROUN, sone to James Broun, in Cokpen.

Dilaitit, accusset, and persewit be Dittay, at the instance of Robert Erle of Louthiane, and Mr Thomas Henderfone, Aduocat, substitute to our souerane lordis Aduocate, of airt and pairt of the steilling of ane waith naig² a tua yeir syne, or thairby. ITEM, of steiling of ane naig³ furth of the Park of Newbottill, pertening to Mr Alexander Ambroise, Minister; and of ane staig,⁴ pertening to Thomas Stewinfoun, foster⁵ of the said Park; committit ane yeir and ane half syne, or thairby. ITEM, for the steilling of ane blak meir,⁶ pertening to Johnne Fyndlasone, furth of the croftis of Leslie; togidder with ane blak staig, pertening to James Clerk; and ane little foirdy⁷ staig; committed vpone the xxvij and xxix dayis of September last. ITEM, for the steiling of thre oxin, pertening to my Lord of Louthiane, furth of Newtoun-maynes; committit the xxvij day of September lastbypast.

VERDICT. The Assyse, be the mouth of Barnard Borthuik in Caringtoun, chancellor, ffind, pronuncet, and declairit the said George Broun to be ffylet, culpable, and convict of the haill crymes of Thift, contenit in his Dittay aboue specifeit.

SENTENCE. To be tane to the Park of Newbottill,⁸ and thair to be hangit vpone ane gibbet quhill he be deid; and all his landis, heritages, annuelrentis, heritabill bandis, and vtheris his guidis and geir quhatsumeuir pertening to him, or quhairvnto he is provydit, to be fforfaltit and escheit to our souerane lordis use, as convict and culpable of the saidis thiftious and tressonabill crymes.

Compeirit Mungo McCall, bailzie of Edinburgh, and eftir convictioun of the said George Broun, and pronunceatioun of his Dome, askit instrumentis of his entrie vpone pannell; and that he was delyuerit af the toun of Edinburgis handis, be the Justice, to my Lord of Lothiane, to be execute, conforme to his dome.

¹ Strangled. ² A *strayed* horse; or perhaps a horse kept for *waithe* or hunting. It may be stated, however, that the general acceptation of the term '*waithe horse*,' is a stallion who escapes from pasture, and wanders in quest of mares; but in this instance, he seems to have been *wayff*, or strayed. ³ Riding horse. A young unbroken *horse*; a stallion. ⁵ Forester. ⁶ Mare. ⁷ Sorrel-coloured; reddish. ⁸ The practice of executing Criminals near the spot where their crime was committed, did not seem to be much attended to at this period; but this is one among the few instances of a pannel, tried in Edinburgh, being carried to some distance and executed for the greater example.

Theft, &c.—Following the Gipsies, &c.

Nov. 30.—ELIZABETH WARROK, dochter of . . . Warrok in the Potterrow, [Edinburgh].

Dilaitit of airt and pairt of the thifteous Steilling, conceilling, reffetting and away-taking of ane filuer mafer,¹ pertening to Quintene Bouftoun, mercheand burges of Edinburgh, a thre yeir fyne or thairby. ITEM, for ane cownone Vagabund and follower of the Gipfeis, and taking pairt with thame in all thair thiftis and juglareis this ten yeir bygane, contrair the Actis of Parliament. ITEM, for ane cownone reffetter of Thift.

VERDICT. Fylet, culpable and convict of the faidis crymes.²

(Dec. 8.)—SENTENCE. The Justice Ordanit hir, togidder with GEORGE RAMSAY, sone to Nicoll Ramsay in Lefuaid, (quha become in will, for certane 3owis³ ftowin be him furth of the landis of Libertoun, pertening to the tennentis thairof, quhilkis war restorit bak agane to the awneris, &c.) to be SCURGET throw the Burgh of Edinburgh: And to be BANISCHET the hail liberteis thair-of, and nevir to be fund within ffoure myles thairto; vnder the pane of deid, viz. The said George Ramsay, vnder the pane of Hanging, but⁴ forder Dome; and the said Elfpeth, vnder the pane of Drowning,⁵ but forder Dome or Law, to be haldin or pronuncet aganis thame.

Piracy, &c.—‘The Englische Pirattis’—Oppression, &c.

[THE transactions of the bold and lawless men, whose trial ensues, and the violence and murders perpetrated by other Pirates, natives of both countries, but chiefly Englishmen, after the accession of King James to the British throne, excited the liveliest interest at the time, both in Scotland and England. Instead, however, of entering into a lengthened detail of the crimes and the punishment of these desperadoes, the Editor will content himself by giving the result of pretty laborious searches, in an Appendix of Original Documents, which sets the matter in the clearest point of view. The sources from which these various and highly interesting Papers have been procured, are, as usual, noted.]

Dec. 8.—PETER LOVE, borne in Lewis,⁶ in Suffex; Johnne Cokis, borne in Walderfweik in Suffolk; Williame Hollane, callit ‘the Batifinan,’ borne in Suffolk; David Howart, Welchman; Nicolas Phillopes, borne in Waillis; Jasperd Staffurd, Irishman; Anthony Colenis, borne (in Tregwne) in Cornel-seyre,⁷ in Ingland; and Abrahame Mathie, Inglishman.

Dilaitit of the crymes of PIRACIE, contenit in thair Dittay, viz.

¹ *Mazer*, or drinking cup. Mazers were usually, of old, made of the maple-tree. ² The sentence is not recorded. ³ Eve-sheep. ⁴ Without farther sentence or trial. ⁵ The usual punishment of death inflicted upon women for theft, &c. In cases of Treason they were beheaded—and for Murder, Witchcraft, &c. burning at the stake was adjudged. It seems to have been then considered barbarous, as well as indelicate, to *hang* females, for any crime. ⁶ Most probably Lowestoffe, Suffolk, which was likely pronounced *Lowes* or *Lewes*, by popular corruption. ⁷ Tregony, in the county of Cornwall, navigable by barges from Falmouth.

FORSAMEKILL as from 3owr verrie 3outh, as pernicious and wicket Impes of the Devill, being gevin ower to all foirtis of villaneis, robereis, and oppreffiones, nawayis to be allowed within any Christiane cownone-welth, schaikng af all lauchfull tredis and callingis, but¹ feir of God, reuerence to the Kingis Maiestie or his hienes lawis, 3e betuik 3our selffis to þat damnable tred of Pirracie, as rooges, thevis, and sea-robberis, pillicieing² and oppressing all maner of people, of quhatfumeuir natioun or cuntrie, cuning within þe compas of 3our mercieles power : And namelie, be committing of the perticuler Pirraceis, heirschipis,³ and barbarus Oppreffiones vnderwrittin, quhairof 3e and ilk ane of 3ow ar airt and pairt, in manner as followis. In þe first, 3e and ilk ane of 3ow, being in companie with Capitane Cowart, Capitane Barret, and dyuerse vtheris 3our complices, notorious Pirattis, Revearis,⁴ and Sea-robberis, in the monethis of Maij and Junij lastbypast, lowfed af Ireland,⁵ in þis schip callit þe Preame,⁶ quhairin 3e was takin and apprehendit, be Neill M^cCloud of Lewis and his clan,&c.; 3e faillit towardis þe French coist, quhair 3e, be way of Pirracie, faucht, assailzeit, buirdit, and be plane force tuik, þe number of fax schipis and tua boittis; the first pairof, beinganeInglish schip of þetoun of Baftable;⁷ the nixt, ane French schip; thethrid, ane French schip; the fourt, aneInglish schip; the fyft, ane pink⁸ of Dunkirk; the faxt, ane Dutch schip; and paireftir, tua fischer boittis; furth of þe quhilkis schipis, and speciallie furth of þe French schipis, 3e pilleit, maisterfullie staw,⁹ reft and robbed sevin hundreth Indiane hydis, with tua hundreth pundis Sterling of gold and money; and siclyk, tuik þe said Dutche schip, quhilk 3e brocht with 3ow as ane pryse to Ireland, laidnit with ane hundreth kiftis¹⁰ of succour,¹¹ tua kiftis of silver-plait, ane kift full of ryellis of aucht;¹² togidder with ane box of Jewallis, the box being of siluer and moþer-of-perle, of tua fute lang, and coverit with reid crammasie veluet, in þe quhilk was four baifer-ftanes,¹³ with certane bloode-ftanes and dyuerse dyamontis and precious ftanes of grit valew. LYK AS, 3e pilleit and robbed furth of Thomas Snellingis bark, in South-Hamptoun, tua kiftis of quhyte succour, tua pakis of cannell,¹⁴ ane hundreth littill barrellis of conserves, tua grit barrellis of pepper, fourtene bagis of ginger, ane barrell of cuscheneill¹⁵ of ane hundreth wecht; quhilk box with þe xxix siluer plait, with þe cannell, gynger, pepper, cuscheneill and hydis aboue writtin, 3e turnet out of þe saidis schipis vnto þe Preame, and cayreit þe samyn to þe Lewis,¹⁶ quhair þe samyn was tane, withuin this present schip, be þe Hieland men. LYK AS, 3e, in þe monethis

¹ Without. ² Pillaging. ³ Plunderings. ⁴ Persons who live by plunder, who *bereave* others by violence of their property. ⁵ Loosed and set sail off the coast of Ireland. ⁶ Priam? ⁷ Barnstable, in Devonshire. ⁸ A small ship built with a round stern, the bends and ribs compassing so as that her sides bulge out very much.—*Bailey*. ⁹ Stole. ¹⁰ Chests, boxes. ¹¹ Sugar. ¹² Rials, or *Pieces of eight*. ¹³ Bezoar-stones, supposed to be an antidote against poison. ¹⁴ Cinnamon. ¹⁵ Cochineal, a scarlet dye. ¹⁶ The Island of Lewis, one of the Western Islands of Scotland, the property of the Clan M^cLeod.

foirfaidis, pilleit and robbed furth of þe said Dutche schip, and Inglis schipis, pair victuallis, faillis and men, quhome 3e compellit to ferue 3ow, as slaves, in all ferueill and flauisch exerceiffes; and brocht the said Pink to the Blak-rok, in Ireland,¹ quhair þe saidis Capitane Barrett and Capitane Cowart, with nyntene of pair company, past on schoir, and was pair suppryfet; þe said Pink tane and apprehended be certane boittis with men that come af þe schoir: And 3e, for feir of apprehensioun, eftir ane combat fell out betwix 3ow, þe said Capitane Love, and þe skipper of the schip callit þe Pream, lousfet out of þat raid,² and come with ane futherlie wynd to the Lewis, quhair 3e tuik and apprehendit Thomas Flemyng (Richiesone) in Anstruper, and his schip, and ane Flemische busche,³ out of þe quhilk busche 3e tuik fyve Flemyngis, and pat in hir fyve of 3our awin companie; quhilk þaireftir, be storme of wedder, was seperat frome 3ow and drevin to Schyteland, quhair þai landit, and detenit þe said Thomas Richiesone and his schip with 3ow, to be 3our gaird in the Lewis; ay and quhill 3e and thay, with the saidis tua schipis, war tane and apprehendit be the Hieland men. AND 3e and ilk ane of 3ow ar airt and pairt of the Robereis and Pirraceis aboue writtin: To þe taikin, 3e and ilk ane of 3ow, at þe leift sum of 3ow, hes Confessit þe haill premisses to be of veritie, be 3our Depositiones. ITEM, for cownone and notorious Pirattis, Sie-Revaris and Robberis, Spuilziearis⁴ and revearis of leill⁵ menis guidis, alsweill on fie as land, quhaireuir 3e mycht apprehend þe samyn.

ASSISA.

James Lokhart of Ley,

Mathow Baillie of Littilgill,⁶ &c.

The Aduocat askis instrumentis of the swering of the Assyse: And for verifeing of the Dittay, repeittis thair Depositionunes producet.

VERDICT. The Assyse, for the maist pairt,⁷ be the mouth of the said James Lokhart of Ley, chancellor, ffind, pronuncet and declairit the saidis aucht persones on pannell, to be ffylet, culpable and convict of the haill perticular Pirraceis and Robberies particulerlie set down in the said Dittay.

DOME. To be tane to ane Gibbet vpon the Sandis of Leyth, within the fflodes-mark, and thair to be hangit quhill thay be deid: And all thair moveabill guidis and geir pertening to thame, and being in thair possessioun the tyme of thair taking, alsweill schip as guidis, geir, jewellis and vtheris being within the samyn, to be escheit and inbrocht to our souerane lordis vsê; as culpable and convict of the saidis crymes.

¹ There are two places bearing this name; one in Sligo bay, the other four miles distant from Dublin.

² Road-stead.

³ A Dutch fishing-vessel, called a *buss*.

⁴ Spoilers.

⁵ Leal,

loyal.

⁶ The remainder of the Assise, merchants.

⁷ By a marking in the Record, it appears that *seven* of the Assise, including the chancellor, voted for Cleansing or Acquitting the prisoners; probably from some remarkable deficiency in the evidence adduced by the public prosecutor, for popular feeling against the Pirates was very strong; and slender evidence in such instances was, in those days, enough to convict such pannells as those who were at the bar.

APPENDIX OF PAPERS ILLUSTRATIVE OF TRIALS FOR PIRACY.

I. LETTER *Neill Mccloud of Harris to the Privy Council*.¹

MY LORDIS of Counsell. My dewitie (and) seruice being rememberit, I ressaunt your l. Lettre frome this beirair, Patrik Greve, desiring me to delyner him the Inglishe Pirott, whiche wes tane be my men, with all hir equippage and apparrelling. Suirle, my Lordis, I wes not at the takeing thair-of, for had I bene thair, I fould haif send the said Pirott, as sho wes tane, to his Ma. and Counsell; for fuirle I delynerit hir to the said Patrik, with all her mvntioun, as I ressanit hir my selff, to witt, with all hir faillis, towis, and tua ankeris, with xiiij peeple of grite cairte peeles,² with hir Capitane and nyne of his. As for pe rest, thay war slayne at the taking of pe said Pirott, and foure Dutcheis³ that wer tane be the Capitane, aucht dayis befor the hulk past to the Meane-land; for I wald nocht hald thame as prifounairis, in respect thay war takin perforce be the Capitane, with twa that deceffit; and I did keepe ane Scottis man in my awin company, to⁴ forder aduise. So I rest.

LEWIS, the 16 of October, 1610.

NEILL M'CLOUD.

II. TRIAL *of Thirty English Pirates, before the Vice-Admiral of Scotland, his Deputes, and certain Lords of the Privy Council.*

[THE following remarkable Trial is taken from an Official Extract preserved in the Charter-room of THE CITY OF EDINBURGH; and is presented in this Appendix, in illustration of the extent to which Piracy had been practised, and of the unrelenting severity with which it was universally punished in this country, as well as in England. The Editor begs to acknowledge the ready and liberal access which has been afforded to him, and the polite attention of the Town-Clerk, in facilitating this and former researches. A very interesting LETTER by the Privy Council to the King, which follows, (No. III.) fully explains many minute circumstances, and the course of proceedings adopted by them to check Piracy, and prevent, as far as possible, the recurrence of such atrocious and daring crimes.]

CURIA JUSTICIARIE ADMIRALITATIS SCOTIÆ, tenta in Pretorio burgi de Edinburghe, coram Domino Jacobo Weymis de Bogie milite, Vice Admirallo Scotiæ, et Magistris Roberto Lermonth et Archibaldo Atchefone Advocatis, Admirallis deputatis ac Supremæ Curie dictæ Admiralitatis Presidentibus (presentibus ibidem nonnullis ex nobilissimo Ordine Senatorum, Regiæ Majestati a Secretis Consiliis) vigesimo sexto die mensis Julij, anno Domini millesimo sexcentesimo et decimo. CURIA AFFIRMATA.

THE quihlk day, in prefens of the said Judges, sittand in judgment, Compeirit personallie Maister Robert Cockburne, Advocat, Procuratour Fiscall of the said Admiralitie, speciallie constitute, and pro-
ducet ane Dittay aganes certane Pirates, Sie-thives, and Rivers,⁵ to the number efter mentionat; in-
dytting thame and ilk ane of thame vpoun the committing of certane manifest barbarous robereis and
maisterfull stealthes vpoun the Sie, thir dyvers yeires bygane; togidder with ane Precept of the said
Great Admirall of Scotland, summondng ane number of famous perfonas to pas vpoun the saidis Pi-
rates thair Affyse; and to determine thairin *affirmativé* or *negativé*, conforme to the said Dittay, as they
knew or fuld be speirit⁶ at thame, vnder the panes thairin contenit; and defyrit justice to be miniftrat

¹ From Orig. in *Denmylne Coll. of MSS.* Adv. Library. This Letter is superscribed 'JESUS.'
'pieces' mounted on carriages, similar to the heavy ship guns long in use on board of Pirate-vessels.

Dutchmen.

⁴ Until.

⁵ *Reivers*; robbers.

⁶ Asked; enquired.

² Perhaps

³ Flemings;

in the said mater, conforme to the lawis and practique of this realme, rait and custome of the said Admirallie, aganes the perfonen Criminallis vnderwrittin; quha, and ilk ane of thame, as they ar efter nominat, enterit and war present vpone pannell. Off the quhilk Dittay and Precept, the tenor followis.

Followis the tennour of THE DITTAY.

INTRANTES.

CAPT. WM. RANDELL,	Rodger Codgen,	Aschtoun Courtney,
Captane Johnne Parkins,	Richard Robiefone,	Robert Croudiss,
George Nicolfone,	Alexander Wifche,	William Peirfie,
Jacob Janfone,	Johne Frieman,	Thomas Peirfie,
Thomas Thomlene,	Edward Brux,	Johne Grase,
Robert Em,	William Tailzour,	Robert West,
Andro Rawling,	Johne Web,	Johne Schiphird,
Walter Cornifche,	Richard Robifone,	Francis Richtop,
Cornelius Jacobfone,	Benedict Ferres,	Nicolas Dartnoll,
Johne Williames,	Francis Wallace,	Johne Dawfone,

gea ar indyttit and accusit of 5our lyffes, That 3e and ilk ane of 5ow, in maner, and at þe tymes *respectiue* efter specifeit, haueing schaikin aff all feir of God, and dew obedience to our foverane lord the Kinges Maieftie, within quhais dominions 3ea and everie ane of 5ow war borne, misregairding his Maiefteis auctoritie royal, and loveabill lawis of his hienes realmes and kingdomes, and contempnand all humane focietie and honest forme of traid and liveing, as becom Cristiane men borne within sua civil kingdomes, quhairin the trew feir of God is professit and þe Holie Evangill preichit; takand 5our selffes to ane maist wyld, barbarous, savage, inhumane, and crowell form of lyff, hes amassit¹ 5our selffes in crewis and vnhappie companeis, in maist hosteill and cruell maner, with all ingyneis of fyre-wark and vapors invasive, of set purpos and intentione to live as commoun roberis, thives, murthereris, and opin Pirates be Sie. LYKAS, 3ea and everie ane of 5ow, in maner and at þe tymes efter mentionat, hes committit the wyld, filthie, and abhominable Reiffes, Thiftes, Robereis, and Piraceis efter reherfit, als weill in forren Seis as within his Maiefteis awin Seis and watteris, not onlie aganes his Maiefteis freindis, confiderates, and allayas, bot also aganes his Maiefteis frie leiges, being in thair lauchfull traidis of navigatioun, by lying in thair wayes, and thair, maist cruellie and barberoullie, by way of Thift, opin Reiff, Roberie, commoun and avowit Piracie, perfewing of thame in all hosteill maner, as said is, taking of pair perfonen captives, puting of thame in feir and dredour of pair lyves, robeing and reiveing of thame of pair schipes and gudis, drowning, slaying, and tortering of pair perfonen, maist vnumercifullie, ranfomyng, and be setting of vthers vpoun schoir in barbarous and vnouth² pairtes, leift 5our cruell practeiffis and Piraceis fould have bene be thame detectit; and be practeiffing of all vther Sie-Thifts, Robereis and Piraceis, as is particularlie efter deducit. Quhairof 3ea and ilk ane of 5ow ar speciall actoris, doeris, airt, pairt, red, and counsell; quhilk 3ea can not deny. Quhairby, 3ea and ilk ane of 5ow hes demereit and worthilie incurrit the panes of death, to the terror and exempill of vtheris to attempt þe lyk crymes in tyme cuming; according to the prescript of his Maiefteis lawis, and the maist loveabill custome of this kingdome. AND NAMELIE, 5ow *Capitane William Randell*, than Captane of þe Schip callit *THE GRYPHOUND*,³ vpoun the first day of Julij, or pairby, 1609 5eiris, being at þe Long Iland, in Ireland, ane plaice of refort of all Pirates and opin Roberis, accompaneit with 5ow the saidis *Jacob Janfone, Thomas Thomlene, Roger Codgen, Richard Robifone alias Dik Couper, Alexander Wifche, Johnne Friman, George Nicolfoun, Edward Brux, Aschtoun Courtney, and Robert Croudiss,*

¹ Joined; gathered; confederated.

² Strange; unfrequented.

³ Griffin; or, as it is here emphatically styled, Grip-hound.

with dyveris vtheris 5our complices, haveing amassit 5our selffes togidder, with all hosteill maner, within the said schip, as said is; AND 5ow the said *Captane Johne Parkins*, being than Captane of the Schip callit þe IRON PRYSE, being lyand in the same Rod¹ of Long Yland, with 5our fellow Pirates and complices, in the said Schip, bodin and furnischt lykwayes in hosteill maner, as said is, accompaniet with *Captane Harvie*, *Captane Cowward* and dyvers vther Pirates, Sie-Roberis, and Reifferis, consultand, lurkand, and waittand vpoune þe practeiffing of all kynd of Robereis and Piraceis, vpoun all maner of perfonen without exceptionne; 5ea first devydit 5our selffis, in maner efter following, viz. 5ea the said *Jacob Janfone*, *Thomas Thomlene*, *Richard Robifone*, *Roger Codgen*, *Alexander Wijche*, *Johne Friman*, *George Nicolfone*, *Edward Brux*, *Afchtoune Courtney*, and *Robert Croudís*, the said *Captane Williame Randill* being than abuird in the said *Captane Williame Parkins* Schip foirfaid, in the said month of Julij or pairby, at the leift vpoune dyvers days of the samyn moneth, haveing consultit and plattit with the said *Captane Harvie* maist thifteoullie and piraticallie rest and away-tuik þe said *Captane Randellis* Schip, and tuk sail and coms toward the West-waird, vnder the conduct of þe said *Captane Harvie*, quhom 5ea all, of commoune consent, than choyfit for 5our Captane; and cumand fordward, in the lattere end of þe said moneth of Julij or August, in the said 5eir 1609, at þe leift vpoune sum dayes of 5e samyn monethis, *respectiue*,² 5ea onbeset,³ perfewit, and burdit,⁴ at þe leift ane great number of 5ow, at command and be advyse of the rest, ane puir fischar-man and his bot,⁵ and robit him of his wictualis and all that he had. AND thairefter, in the said moneth of August, at þe leift vpoun sum dayes pairof, 5ea the saidis Pirates affoirsaidis onbeset and perfewitt, in all hosteill maner, ane French Bark, cumand from þe New-found-land, quhair 5e forceablie enterit abuird of þe same, robit and rest þe haill victuallis being pairintill. AND thairefter, in the said moneth of August, October, November, December, or vpoune sum dayis of þe saidis monethis, *respectiue*,⁶ 5ea, haueing returnit bak agane to Ballendrac, vpoune the West pairt of Ireland, and haueing trymit⁷ 5our said Schip, and talking sail and cours to þe Seis for catching of 5our prayes,⁸ vpoune dyvers dayes of þe saidis monethis immediatlie aboue writtin, or sum of thame, 5ea then forgadderit with Captane Peirfie, ane comoune and deiteistabill Pirat and Sie-river, and joyning 5our selff in vnhappye societie with him, vpoune þe thrid day of þe said moneth of November or pairby, or sum dayes of þe samyn, being aff and on with the North Cap,⁹ or neir thairby; and thair, all togidder of on mynd and wickit resolutionne, avaitting and lurking for catching of 5our pray, 5ea the saidis Pirates immediatlie affoirsaidis, forgadderit with ane Schip of Midilburgh callit THE SANCT JOHNE, quhairof Daniell Abeg was maister, being than boun to Lighorne¹⁰ in Italie, and thair 5ea altogidder being actoris and deid-doeris, airt, pairt, red, and counsell with vtheris, in all hosteill and forceabill maner, invadit and perfewit þe said Schip, buirdit, rest, and variet¹¹ hir away to the Coft of Barbarie to Sanctieruce, quhair 5ea and everie ane of 5ow forceablie extrudit and pat out þe said *Captane Harvie*; and haveing electit *Captane Barrett* to be 5our Captane, enterit into þe said Dutch pryse, and gave þe said schip callit the Gryphound to þe said *Captane Peirfie* and his company; and pair violentlie tuik *William Sanderis* and *Michaell Paterfone* his boy, with sex mo captiues and prifoneris; and sua deteinit thame in the said Schip, quhair the said *Captane William Randell* and *Captane Johne Parkins* being arryvit at Sophie in Barbarie, with 5our haill crew, and vicket companie foirfaid, enterit 5our selffes in societie with þe said *Captane Barrett*, and thair 5ea all, accompaniet and assistit with the said *Captane Peirfie*, being tua Schipes togidder, in the monethis of December, Januar, Februar, Marche, Apryll, Maij, Junij, at the leift vpoune dyvers and fundrie dayes of the saidis monethis, or sum of thame, past to the West Yles,¹² quhair 5ea haveing rancounterit at þe Yle Sanct Michaellis with tuo Englissh Schipes, and pair 5ea, with all kynd of hosteill maner, invadit and perfewit the saidis tua Schipes, buirdit thame, and rest and robit thame of pair haill victuallis, and vther furnitur being pairintill. LYKAS, also 5e þe saidis Pirates immediatlie aboue namet, in the saidis monethis of December, Januar, Februar, March, Apryll, Maij,

¹ Road; road-stead. ² Attacked; beset. ³ Boarded. ⁴ Boat. ⁵ Trimmed; refitted. ⁶ Prey; booty ⁷ The North Cape. ⁸ Bound for Leghorn. ⁹ Wore away; varied her course, &c. ¹⁰ The Azores.

Junij lastbypast, at þe leift vpoune sum or dyveris dayes þairof *respectiue*, 3ea, being boune altogidder to þe North Cap, and haueing forgadderit and met with ane French Schip, 3ea all and everie ane of 3ow, actoris, airt and pairt with vthers, maist cruellie invadit and perfewit an French Schip, callit,¹ quhilk 3e violentlie manit and buirdit, reft and cariet hir away, and maid þe haill cumpanie and trew men being pairintill 3our prifoneris and captives. AND siclyk, vpoune þe nixt day þairefter, being vpoune sum dayes of þe saidis monethis *respectiue*, at that same plaice, or neir by to þe North Cap, 3ea haueing forgadderit with ane Dutch Prem, 3ea altogidder being actoris, airt and pairt with vtheris, in all hosteill maner, invadit and perfewit þe said Schip, manit and buirdit hir, tuik all her men and companie captives and prifoneris, and brocht þe said Schip, with hir haill laidnyng, gudis and geir, to þe Cost of Ireland, at þe said Long Yland; in the quhilk journey, 3ea the said *Robert Em* was present, and voluntarie enterit in thair companie, and remanit with thame senfyne, in all þair roberis. AT the quhilk Long Yland, in the saidis monethis of December, Januar, Februar, March, Apryll, Maij, Junij, or sum dayes of þe saidis monethis *respectiue*, haueing strukin fail and cassin anchor, and thair 3ow the saidis *William Peirfie, Thomas Peirfie, Johnne Williames* and *Nicoll Dartnoll*, being thair present, vpoune þe schoir, as maisterles men and vagaboundis, cuming of set purpos from Londoune to Ireland to þe said Long Yland, being ane comoune plaice of resort of all Pirates and Roberis to enter in the wickit fellowschip of Roberie, 3ea all, of 3our awin voluntar accord, and of devyce and plat foirsaid, com to þe said schip, quhairn the said *Captane Parkins, Captane Randell*, and þair wickit companie wer, and enterit in the said schip callit þe Dutch Pryfe, as assisteris with þe foirsaidis vther Pirates; AND haueing, in þe saidis monethis *respectiue* aboue writtin, or sum dayes þairof, louffit and maid fail thairfra, vpoune þe same Cost of Ireland, 3ea altogidder forgadderit with tua French schipes, and þair, in all hosteill maner, as said is, maist cruellie invadit and perfewit þe saidis tua French Schipis and þair companie, and violentlie buirdit thame, reft, and robit, and pillied² thame, and away-tuik þe saidis Schipes, with þe haill gudis and geir being pairintill; and pat þe haill men and companie on schoir, in findrie vncouth and barberous paites, to þe mercie of þe Seis; AND thairefter, 3ea all, the foirsaidis Pirates and 3our complices, in the saidis monethis of December, Januar, Februar, March, Appryll, Maij, Junij, and Julij instant, vpoune sum or mae days of þe saidis monethis *respectiue*, be storme of wedder being driven to þe said Long Yland, and thair haueing cassin anchor, and haueing met and forgadderit, consultit, plattit and devysit with *Captane Esson, Captane Bisshop*, and vther Pirates and Sie-Roberis; In this mene tyme, 3ow the said *Robert Wast, Walter Cornishe, William Tailzour, Francis Wallace, Francis Richtop, Cornelius Jacobstone, Johnne Schipherd, Richard Robifone*, callit Dik þe Hoyfer, *Johnne Gryffe, Andrew Rawling, Johnne Web, Benedict Ferres*, and *Johnne Dawfoune*, enterit in societie and assistance with þe saidis *Captane Parkins* and *Captane Randell*, and þe rest of þair wicket crew, of 3our awin voluntar accord, 3ea being all maisterles men and vagaboundis, as said is. LYKEAS, vpoune sum of þe dayes of þe saidis monethis *respectiue* abovewrittin, 3ea louffit all togidder, and tuk fail fra the said Long Yland, and cam in 3our cours to þe Cost of Norroway; and thair, haueing foirgadderit with ane Flemis schip, being laidnit than with cornes, and thair 3ea, in all hosteill forme and maner, as said is, enterit abuid of þe said schip, tuik hir and hir haill laydnyng, gudis and geir, and robit hir of hir curceabill³ gudis being pairintill, and detenit þe said schip in 3our companie captive and prifoner be þe space of four dayes or þairby. AND siclyk, in the saidis monethis of December, Januar, Februar, March, Appryll, Maij, Junij, and Julij instant, and vpoune sum or vther dayes of þe saidis monethis *respectiue*, 3ea all, persisting in 3our vngodlie and detestabill traid of lyff, haueing foirgadderit vpoune þe same Cost of Norroway, with ane Dutch Schip, callit,⁴ 3ea, being actouris, doeris, airt, pairt, red and counsell with vtheris, in all hosteill maner, as said is, violentlie perfewit and enterit abuid, manit and tuik þe said schip and her haill company, as prifoneris and captives, and made ane pryfe of þe samyn. AND ALS, 3ow, þe foirsaidis Pirates, in the monethis

¹ The name is left blank.² Pillaged; plundered.³ Merchantable; staple.⁴ Left blank.

immediatly affoirfaidis, at pe leift vponne sum or findrie dayes of pe famyn, continewallie lurkand and awaiting for 3our pray, haveing foirgadderit vponne pe Coft of Norroway with tua Dutch fchipes, quhairof pe ane was ane Schip of Danfkene, quhilk Schip 3ea all as actoris, doeris, airt, pairt, red and counfell with vtheris, in all hofteill forme invadit and perfewit, as faid is, buiridit pe fame, robit and ftrypit pe haill companie being pairintill off thair gudis and geir, reft and tuk out of pe faid Schip of Danfkene tua peice of ordinance. AND LYKWAYES, in the faidis monethis of December, Januar, Februar, Marche, Appryll, Maij, Junij and Julij instant, or vponn sum or vther dayes of pe faidis monethis *respectiue*, 3ea, the foirfaidis Pirates and Sie-Thives and Rivers, being actores, doeris, airt, pairt, red and counfell with vtheris, haveing foirgadderit vponne pe Coft of Zetland, within this Kingdome, with ane Carvall of Zermouth, quhairof Mr Muriall was maifter, and in all hofteill forme, as faid is, perfewit and invadit pe faid fchip, as faid is, robit and away-tuk furth pairof, fra the faid Mr Muriall tuentie-fyre pund ftrivling; and from tua Falconeris, being paffingeris boune to Norroway for bying of halkis,¹ four pund ftrivling; and thairwithall tuk Johne Colman and Peter Inkiping furth pairof, as captives and priffoneris with 3ow; and cariet thame quhair 3e pleaffit. AND ALSO, in the faidis monethis *respectiue* immediatlie above writtin, and vponne sum dayes thair of, lurking and awaiting continewallie for the compaffing and catching of 3our pray, vponne trew fubiectes, 3ea haveing fene and foirgadderit with ane Bark of Cathnes, vponne pe Coft of Zetland, quhairof was maifter, 3ea the foirfaidis Pirates, at pe leift pe maift pairt of 3ow, and 3e all as actoris, doeris, airt, pairt, red and counfell with vtheris, vnder cloud and filence of nycht, invadit and perfewit pe faid Bark, buiridit pe famyn, ftrak and brak vp pe kiftes and vther lokfast lumes² being pairintill, robit and tuk furth pairof ane hundreth merk fterling; and tuk furth ane certane number of fteikis³ of braid-claith pertening to pe faid maifter, and cariet pe famyn to 3our fchipes. AND 3ea and ilk ane of 3ow gat 3our fkaire⁴ of pe faidis robit gudis, and fua, at this felff fame tyme. AND vponne pe dayes of pe monethis *respectiue* foirfaidis, haveing 3our cours direct towardis Orknay, thair to have lurkit, landit at pe Caftell of Kirkwall, and com to pe toune pairof, quhair 3ea and ilk ane of 3ow, as opin and avowit Pirates and Sie-Roberis, behavit 3our felffis maift barberoullie and bafflie, being eveir and at all tymes drukin, and fechtand amanges 3our felffis, and fubiecting and giuing of 3our felffis ovir to all kynd of wyce and villanie. LYKAS, 3e, pe faidis *Robert Croudys, Richard Robifone*, callit pe Hoyfier, and *Andro Rauling*, in 3our madd and drukin humoris, perfifting than in 3our accustomit traid of Piracie, violentlie and perforce enterit and buiridit ane bark pertening to my Lord Erll of Orknay, lyand vponne pe fchoir, off plane plat and intentione to have robit, fpol3iet, and reft hir; quhair 3e was, in that attempt, tane and apprehendit. LYKAS, 3e, pe foirfaidis Pirates prefent on pannell, and ilk ane of 3ow, war thair lykwayes tane and aprehendit with the faid Dutch Schip, being laidin with hydys, leid, canon, arteil3erie and vther furnitur; and 3ea and ilk ane of 3ow ar actouris, doeris, airt, pairt, red and counfell of pe famyn cryme, and of all and findrie pe premisses; As 3e and ilk ane of 3ow can nocht deny, and ar all comoune Roberis, Thives, and Rivers, auld and new.

Followis the tenor of the PRECEPT.

LUDOUIK DUX OF LENNOX, Erll of Darnlie, Lord Torboltoune, Methvene, and Obigney, &c. Great Admirall of Scotland: To our Louittis, &c. [It is unnecessary, in this place, to insert the Precept of Executions at length, which are in common form.]

QUHILK Dittay and Precept affoirnamet being producit, in prefens of the faidis Judges, and the foirfaidis haill Pirates and Criminallis indyttit, compeirand and enterand vponne pannell, as faid is, the faid Procuratour Fiscall afkit instrumentis and Act of Court thairvponne: And than defyrit the faidis Criminallis to be put to the knowlege of ane Affyse; and for that effect defyrit the faid Affyse to be callit, and the foirfaid Dittay red, as is aboue-ceauit,⁵ in prefens of the pannell and perfones of Affyse;

¹ Norway was celebrated for the best breeds of falcons, &c., for the sport of hawking, then so much in vogue.

² Literally, *looms*; implying lockers, chests, &c. in which valuable goods and money were stowed away.

³ Webs;

pieces. ⁴ Share, portion. ⁵ Perhaps for 'conceavit.'

quhillk desyre the saidis Judges thocht reffonabill, and thairfoir Ordanit the officeris of Court to call the names of the said Affyse, efter the Clerkis publict nominatioun, conforme to the Precept aboute writtin, direct thairanent ; quhairof the names compeirand followis.

NOMINA ASSISÆ.

John Landis, merchand,	James Borthuik, merchand,	William Duff, skiper,
Robert Halyburtoun, merchand,	Johne Mairtene elder, skiper,	William Ridoch, skiper,
Johne Maffonne, merchand,	Johne Mairtene younger, skiper,	Johne Watfone, skiper,
Johne Mitchelbill, merchand,	William Weir, skiper,	Johne Moir, skiper,
Johne Hutcheffone, merchand,	Johne Wilffonne, skiper,	William Mureheid, merchand.

Quhillkis perfonis of Affyse being ressaüt, be consent of the haill Criminallis being vpoun the pannell, quha declairit they had na obiectione nor imputatioun againes thame, nor na caus quhy to repell and fet thame or ony of thame: In the quhillk respect, the foirsaidis Judges tuik the saidis perfonis of Affyse and ilk ane of thame deiplye and solemplye fuorne, vpon 'thair greit aithes,'¹ that they and ilk ane of thame fuld leill fuith say and na fuith conceill, for na thing that be mycht, bot to determine verilie vpoun the said Indytment, be thair pairt of Hevin, and as they fould answere to God at the dreadfull day of Judgement: Quha instantlie passit vpoun the said Affyse. And thairefter causit reid the foirsaid Dittay to the pannell, in presence of the said Affyse, in maner and conforme to the particular tenour and contentes above mentionat. Quhillk Dittay being judiciallie red, with findrie taikins² and informatiounis of everie ane of thair giltines; compeirit the haill perfonis of the pannell, and heirand the samyn, being accusit thairvpoun, could schaw na lauchfull nor reffonabill caus of thair innocencie of the saidis crymes layd to thair charge; ilk ane of thame for thair awin pairtes, conforme to the said Dittay, and according to thair awin Depositionis red to thame, and in presens of the said Affyse, quhillk they Confessit; and referrit thame to the Tryell of the said Affyse. Quhairvpoun the said Procuratour Fiscall askit instrumentis and Act of Court; and desyrit the said Affyse mycht be removet out of Judgement, and to be incloisit, to the effect they mycht give thair Verdict and determinatioun thairintill, according to thair aithes alredie solemplye gevin in manner foirsaid.

VERDICT. Quhillkis perfonis of Affyse, being removit out of Judgement and incloisit, electit and choysit all with ane consent, the said James Borthuik, as chancellor of the said Affyse; and efter lang deliberatioun, reiding of the said Dittay, togidder with the said perfonis Criminallis thair Depositionis, and vther notices and informatiounis, and als with thair Confessioun vpoun pannell, being ryple and at lenth advyfit, and all aggrieand in ane voice, but discrepance or varriance, be the mouth of the said James Borthuik, chancellor, re-enterand agane in Judgment, Decernit and Declairit, and Decernes and Declaires, the foirnamet haill perfonis Criminallis on pannell, and everie ane of thame, to be GILTIE, airt and pairt of the foirsaidis Robereis and crymes contenit in the said Dittay, and Fyllit and Fyllis thame and everie ane of thame thairof, and (that) of everie heid, point, and circumstance of the said Dittay.—Quhairvpoun the said Procuratour Fiscall lykwayes askit instrumentis; and Remittit the Dome to the saidis Judges.

Followis THE DOME,

At command of the saidis Judges, be the mouth of Patrick Leveraunce thair Dempfier of Court.

FORSAMEKILL as the saidis *Captane William Randell, &c.*,⁵ present on pannell, and everie ane of thame, ar ffund, be ane conding Affyse, Giltie, art and pairt of the committing of certane vyld Robereis, Piraceis, and Reiffis, contenit in the said Dittay immediatlie befor writtin, quhairfoir I adiudge thame and ilk ane of thame to be tane to the Peir and schoir of Leith, within the Sic-fluid and mark thairof, and thair to be Hangit vpoun ane gibbett till they be deid. And Ordanes the foirsaid greit Dutche

¹ This singular form of oath illustrates in the strongest manner the anomalous office of a Jury-man, in those times; they being called as *witnesses* of the facts charged against the pannel, as well as Assisors, as has formerly been explained. ² Proofs; evidence. ³ The names of all the prisoners recited here.

Schip callit the Pryfe,¹ haill arteiljirie, ornamentis and apperrelling thairof, hydis, leid, and vther furnitur being thairintill, apprehendit with thame, and all vtheris moveabill gudis and geir, to be efcheat and inbrocht to our fouerane lordis use (but preiudeice to my Lord Admerall of the efcheates of Pirates and Sie-Roberis in tyme cuning). And this I give for Dome.

EXTRACTUM per me, Joannem Young, Scribam et Clericum Principalem dictæ Admiralitatis Scotia, sub meis signo et subscriptione manualibus. (L. S.²) JOANNES YOUNG.

III. LETTER, the Privy Council of Scotland to THE KING, 'anent the Inglishche Pyratis,'³ (Captains Randall and Parkins, &c.)

MOST GRATIOUS AND SACRED SOUERANE,

VPOUNE advertisment gevin to ws that some Pirott schippis had bene seene in the mounthe of the Firth,⁴ and the same secundeit by the complaintes of a grite many of your Mat^{ies} subiectis, bothe on the West Coast and heir on the Eist, of the vnquietnes and hafaird of passage, by reassoun of the frequencie of Englishe Pirottis on the sea; and speciallie, of one of Caithnes, who, in his passing home, wes robd' of all that he had: And boith by him, and the repourt of otheris who mett some of these Pirottis on the sea, being certified, that they wer gone toward the Orknay Ylandis, We, being moved and grevit with the complaintes of your Mat^{ies} poore people, and being loathe to impesche⁵ your Maiesteis vtheris weyghtie affairis, with the aduertisment thairof, whill⁶ we had done some thing thairin oure selfis; and wilbeing that, in a mater of this qualite, (admitting hardlie ony delay, wherin the omitting of the present occasion might do much harme,) your Mat^{ie} sould rather find ws cairfull of our dewyite, then urtherwayes remisse or negligent, we did heirupoun presentlie direct thrie of the best schippis at that tyme within the harbour of Leithe, weill mannit and furneissit with all weirlyke prouisioun (your Mat^{ies} awne schip at that tyme not being arryved heir.) And hauing gevin vnto thame expres direction and charge to make searche, and to follow quhiddirfoeur thay could apprehend those Pirottis; and our Schippis having mett with thame vpoun the coast of the Mayne-land of Orknay, thay having tua faillis, the one a Schip aboue 200, the vther a Choise-pinnace⁷ of 100 (twn of birth,⁸) efter a bloodie conflict, in whiche tua of oure men wer killed and findrie hurte; the Pinnace, being excellent in failling, maid choise rather by flicht to faife hir selff, then, by ony langer stay, to abyde the hafard of taking: and albeit sho wes followed for a space, yitt did sho still gayne ground. Wherupoun, the persuite being left of, the vther gritt Schip in the meane quhyle being boordit, wes broght away be oure schippis; and in hir wer takin to the number of threttie able men, besydes some few prisounaris, whom these Pirottis did keepe aboorde. Who, after thay had bene dewlie and feuerall tymes examined, at last all these threttie wer putt to thair tryell and found guiltye: Of whiche number xxvij ar execute and putt to deathe; of whome thair were tua Capitaines, by name Capitaine Perkynis and Capitaine Randell. The other thrie are repyrit and continewit vntill suche tyme as your Maiesteis pleasour be knowne, in regairde that thair is hoip, by thair forder examinatioun, to learne oute some thingis tuitcheing the estait. We haif alreddy discouerit some mater of abuse, hoiping to

¹ There is in the Charter-room of the city of Edinburgh, from which the above remarkable Trial has been taken, a GIFT OF THE ESCHEAT of the Dutch Ship noticed in the foregoing 'Dome,' passing under the Privy Seal, and dated at Edinburgh, Aug. 7, 1610, in favour of 'Thomas Young, induellar in oure burgh of Edinburgh, his airis and assignayes aue or ma;' which narrates that these Pirates 'wer justlie and worthelie execute to the dead, vpoun the morne thairefir.'

² The ancient Seal of the Court of Admiralty is remarkable, having a Vessel of War in full sail, with the arms of Scotland, England, and Ireland, on three shields introduced in the centre of the smaller sails; and on the main-sail is a large escutcheon of pretence, containing the quartered arms of the Duke of Lennox, as Hereditary Lord High Admiral, with the motto, 'KEIP.' The legend is, * 'SIGILLVM. OFFICII. ADMIRALITATIS. REGNI. SCOTIE.'

³ From the Original, preserved in the *Dennyne MSS.* Adv. Library, A. 2. 40. It is also transcribed by the Earl of Haddington, in his *MS. Collection*, General Register House, Edinburgh, but probably from an imperfect scroll or copy, as there are many minute variations. The most important of these are noted here.

⁴ Of Forth.

⁵ Fr.; hindrance.

⁶ Until.

⁷ Called a 'Chase-pinnace' in *Had. MS.*

⁸ Added

in *Had. MS.*

find more oute, wherby this grite increffe of Piracye hathe bene by some, far aganis thair deuyteis to your Ma^{tie}, too muche fosterit and mantenit; bot of the particularis of the same, as vnwilling to commit thame to wryte, your Ma^{tie} falbe certifyed at lenth by your Maiesteis Secretarye of this Kingdome, who is schortlie to mak his repair thither. In the mean quhyle, the personis of those men whose lyves ar spaired falbe faillie kept and maid furthcomeand, ather for forder examinatioun heir, or, vpoun knowlege of your Maiesteis pleasour, falbe broght thither to be tryed. Thair wer also mony pregnant presumptionis that howeur these men now spairit wer deprehendit in the societie of the rest, that the same wes more by enforcement then by consent, which wes¹ affirmed by the most parte of thame who war executed. This company of Pirottis did interteyne one whome they did call thair Persoune, for faying of Prayeris to thame twyfe a day, who belyke ather wearyed of his cure, or fearing² the ensening (dainger and³) destruction of his flock, had foirsaikin thame in Orknay, and priuelie conveying him felff over land, wes at lenth deferyed and deprehendit in the burgh of Dundie; and being broght hither, did so cleirly confes and gif evidence aganis the rest; and, being confronted, broght mony of thame to confessioun. Thair being heirwith some likliehoode that his stay with thame had bene by constraint, we haif heirvpoun, in lyke soirt, continewit him frome being putt to tryall vntill your Maties pleasour be knowne.

We do vnderstand, by aduertisement from Orknay, that thair be some fyve or sex Pirottis mo deprehendit; bot quidder thay be of this company or not, it is vncertane; alwayes, we do expect thame by the first occasioun of any schipping that dothe come from thense. And since none of ws ar ignorant, that by reafoune of aduertisements, not onlie frome all the corneris of your Maties awin dominionis, bot alsua frome foreyne pairtis, your Ma^{tie} hes newer almost any intermissioun or respitt, (your Maiestie, by Godis Prouidence and to your subiectis vnspcakable happynes, being the great Oceauene vnto whiche all revaris and brookis do rinne,) as in dewytye we could not omitt to acquent your Maiestie hierwith, so the feir of troubling your Maiestie with too long a Letter hathe moved ws to refer the particular⁴ relatioun of all the incidentis in this busynes to a more proper occasioun. And concerning all suche other directionis as it pleisit your Ma^{tie}, ather by Commiffioun sent be the Lord Burley, or by Letteris wryttin vnto any of ws, concerning the Marques of Huntley, the Erl of Errole, or any vther mater worthie of the advertising, your Maiestie falbe certifyed⁵ of all these oure procedingis by the Secretarie, at his repair be your Maiestie. And so, praying God to blisse your Maiestie with a long, happy, and prosperous reigne, we rest for ever,

Your Maiesteis most humble and obedyent subiectis and seruitouris,

EDINBURGH, 27 July, 1610.

DUNFERMELINE. DUMBAR.

To THE KING his most sacred and excellent Maiestie, &c.

IV. EXTRACT from *Minutes of Privy Council Proceedings*,⁶ Jul. 4, 1615.

THERE is one CAPTANE MAISONNE of *Lyne*, with fyve or sex others of his companye, in warde within the Tolbuith of Edinburgh, upon verie probable suspitiounes of Piracye. The estate of the cause is this. *Captane Mafon*, some foure yeeres fence, or therby, having purchased a yeere Tak⁷ of the Affyise-hering⁸ of the Northe Ylles; and vpoun occasion of his haunting of the Ylles that yeere, having enterred in some acquaintance with the Bishope of the Ylles, and haveing transported him to and from Yreland,⁹ he procures of the Bishop, in the moneth of Apryll, 1612, a Lease of a lytle Ylle called Rona; bot neuer com to tak possession of the Ylle, nor to try the worth thair of, whill¹⁰ this yeere.

¹ The *Had. MS.* reads, 'And the same also.' in the *Had. MS.*

⁴ 'Plaine,' in *Had. MS.*

² 'Foirseing,' in the *Had. MS.*

⁵ 'Aduertyset,' in *Had. MS.*

³ These words added

⁶ *Denmylne MSS.*

Advocates' Library, A. 4. 15. ⁷ One year's lease.

⁸ A tax paid to the Crown upon the quantity of herrings caught at the fishery; which, owing to the expense of collection, was usually farmed out annually.

⁹ Andrew Knox, Bishop of the Isles, and Abbot of Icolmkill, had livings in Ireland. He was translated to the see of Raphoe, in Ireland, anno 1622.

¹⁰ Until.

Hes a pretty bark, wherewith this last yeere bygone he made fundrye voyages betweene Amsterdame and Lyne, haveing none in equyppage¹ but sex perfoncs. This yeere, when he resolues to come to our Ylles, he takes in at Yairmouth one CAPTAN WILMAN, who had beene a notable Pirott, and had obtenead his Maiefties Remiffion, with two of his brether: And pretending, as he affermes, to come to Rona to have taken poffeffion of the Ylle, and to have tryed the fifheing there, (althoght he was nouthier prouided with falt, trees, viettualles, nor no kynd of outredd for the fifheing,) he comes firft to Orknay, where he takes in other two perfoncs, the one to be a cook and the other to be a pyllot, and makes his adreafs for Rona; but the winds being contrarions, and not darring tak land there, he comes about the Ylles to Mull, where he ftayed foure dayes. In which tyme, there comes to M^cCLEANE a derectiion and Commiffion from the Counfall, for the perfute of Coll M^cGillefpik and the others Rebels of Ila.² Captane Mafone being acquented heerewith, he ingyres him felf in that feruice, geveand M^cclaine to vnderftand that he would hafard his perfon and fhip in perfute of the Rebelles, vpon hope of his Maties confideratioune and rewarde for his feruice. M^cclaine geveand truft to his difcourffis, encourages him to follow that enterpryfe; and furnifhes him with fome victuales, for he had lytle or non of his owne: And fo, leaving M^cclaine his country, he comes bak againe that fame way he went, towards Rona; and haveing ftayed there fome half a day, and getting information that the Rebelles wer in the Lews, he derectis his courfe from that towards Orknay, to tak in mo men, as he pretended, for the better ftrenthening of him againft the Rebelles. In Orknay he taks in fex men, which made his number to be feavintenth perfoncs. And whereas he fhould have gone to the Lews, he directes his courfe for Zetland, and from that to the coaft of Norroway, where, going into a bay under a craig,³ and lying there at ankar couertlie vnder the craig, there comes by a fhip of Copmanhouen.⁴ Vpon the fight wherof, Mafones fhip immediatlie louses, followes the Copmanhouen fhip, takes her, and bringes her in to the bay, takes the wholl equippage⁵ oute of her, which wer four or fyve perfoncs, and ftowes thame in Mafones fhip.

Captane Mafone, to excufe him felue of this deide, makes this difcourfe, that when he came to Zetland, Captane Wilman perfaveing ther voyage lyk to proof fruitles, there was no appearance of the Rebelles, he layed to his charge, and earneftlie delt with him to go feek fome adventur by fea; and becaus he refufed to yeeld to fuch a vnhoneft and vnlawfull motion, Captane Wilman ftirred vp the wholl companye of his fhip againeft him, vfurped vpon him the charge and commandement of the fhip, depryved him of all charge, and took him aganeft his will to Norroway; and when the pryife was perfewed, ftowed him beneth—and at laft patt him in the pryife, whiche wes a ould lek⁶ fhip, with three of his companye that would not yeeld to follow Wilman, fpoyled him of his owne fhip, which wes a tight and good fhip, and fett him to the fea, to the haifard and perrell of his lyf.

For difcouerie and tryeing of the troth of this difcourfes, the Counfall hes been verie carefull in the examinatioun of fuch of Captane Mafones companye as ar broght heere, and by there examination it is funden that (there) wes neuer any mater of conteftation betweene Maifone and Wilman, that Willman ftirred vp the companye againeft Maifone; and that there was neuer once fuch motion in the fhip, concerning that mater; that Mafone difwaded none of his companye to joyne with Wilman, nor neuer told any of thame that Wilman had a purpofe for Pirracye; but that thay aggreid verie well in all thingis. And the Maifter of the Copmanhouene fhip fayd planelie, that Mafone wes aboue,⁷ in his fhip, when he wes perfewed and taken; and when his fhip wes broght in to the bay and faftened to the other fhip, that Mafone enterred in his fhip, and that Wilman and he fuped togidder and made mirrye vpon the prouifion that wes in his fhip, and drank out his wyne and his beir; and that Mafone lay all night in the pryife, and vpon the morn called for the Maifter of the pryife, and tould him that he behoofed to tak his fhip, feeing Wilman had taken his fhip; and fayes, that vpon the morne,

¹ Crew. ² See Papers appended to the Trial of Sir James Makconicill, III. 1, &c.
the common name then in use for Copenhagen.

³ Crew.

⁶ Leaky.

³ Rock.

⁷ On deck.

⁴ The

both shippes loufe and come togidder the space of foure myles, to witt, Maifon in the pryife, and Wilman with the wholl companyee, except three men and a boy, in Mafones fhip; and when they finder-ed, there wes gryte mirth amonges thame, with drinking mony good nightis; and the Maifter of the pryife fayes forder, that his fhip is iij^c dollouris bettar nor¹ Mafones fhip.

The two companyees being finder-ed, Captane Mafone come bak againe till Orknay in the Copman-houen pryife, of purpofe, as appeires, to have taken in fome ma² men; but beeing guyltie, in his owne confcience, of Pirraeye, he durft not tak land, but took him to the fea, and by ftorme of wedder wes dryven upoun the coaft of Caithnes; and being lyand there, in a harborry, he wes boorded by a fone of the *Larde of Markles*, and he and his foure men were taken and fend heere.

Captan Wilman in Mafones fhip pafte bak againe to that fame bay from which they loufed, and the nixt morning took a fhip of Ruftok, loadned with fifhes, and fet the wholl companyee of the fhip, being nyne in number, vpon a rock in the fea, and kept onlie one with thame; and Wilman come with the pryife and Mafones fhip till Orkney vpon a Sunday, and he pafte to land and wes enter-teaned by the country people, and fome come aboorde and wer mirrie with him. Vpon the morn, being Mononday, two of the *Lairde of Grymmiffayes* fones, and one *Robert Elphinfoun*, comes aboorde of the pryife, wherin Wilman and his fkippar war both for the tyme; and haueing fome conference and fpeatch with thame, and efpying there ftrengh, they commanded Wilman to rander; and he refufeing, the youngfte of *Grymmiffayes* fones immediatlie gave him a deadlie ftroak, wherwith he dyed prefentlie; and at that fame instant killed the fkippar by an other ftroak. And fo; the Captane and fkippar being both killed, the reft of the companyee and both shippes randered. In this meantyme there is a Waughtar lyand in Zetland, attending the Flandes Fleitt³ at the fifcheing, and being enformed by *Mr Williame Levingfoun* fchiref-depute, that a Pirote with a pryife wes gone by towardes Orknay, this Waughtar, refaueing a pylote from the Schiref-depute, followes the Pirote to Orknay, and comes directlie to this fame harborry where the Pirote and the pryife lay, takes thame both and bringes thame to Leyth, faying, that he had a command and directioun from his Maifteris, the Eftates, that what euer Pirrottes he fand in the Scottifhe Seas, he fould tak thame and prefent thame with there shippes and goodes to the Kinges Maiefties Counfall here. The Orknay men who killed the Pirrote and his fkippar followed the Waughtar, and greeueonflic complained of the wrong alledged done to thame in taking of the shippes af there handes, which thay had recouered with the hafard of there lyues; and they alledged that they wanted findrie of there goodes which they had put in the shippes, they being of purpofe to have broght thame aboute to Leyth. The Captane of the Waughtar excufed him felue, that he knew nothing that they had recouered the shippes; but believing the shippes wer ftill in the poffeffion of the Pirrottes, he tooke thame and broght thame heere to the Counfall—and tutching the goodes which they alleged they wanted, the Captane conftantlie affermed, and fo did the Orknay Pylote, that the Shiref-depute delyuered him, that they wanted not a pennie worth of that which he gott in the shippes. The Counfall accepted verie well of the Waughtars doings, hes returned him bak, with thanks, and hes propnyed⁴ him with a coup of lx vnce⁵ weight.

Directioun is geuen for delyuerie of the Copmanhouene fhip to the owuar, he geveand fome rea-sonable fatifaction to the gentlemen who recovered the fame from Captane Mafone.

Bycaus the owners of the fhip of Ruftok are not heer to refaue there fhip and goodes, and becaus the goodes will not keepe in the fhip, therefor derectioun is geuen to roup and fell the wholl goodes beeing within the fhip, and to mak pennie of the fame; to be furth-cumand to the ownaris, whan they fhall come heere; they geveand rea-sonable fatifaction to the gentlemen who recovered the fhip and goodes from the Pirrottes.

¹ More valuable than.² More.³ Flemish Fleet.⁴ Gifted; presented.⁵ Sixty ounces.

Mutilation and Demembrement.

Dec. 19.—JAMES FORRESTER, sone to vniq^{le} James Forrester, ffather-brother to Sir Robert Forrester of Strahenrie, kny^t.

Dilaitit, accuset, and persewit be Mr David Anderfoun at Ballingarie, off airt and pairt of the Mutilatioun of the said Mr David of his richt airme; committit vpoun the tuentie day of October I^m.Vj^c. and nyne yeiris, foiranent¹ the said Mr Davidis duelling-hous dur, at the Kirk of Ballingerie; vpone sett purpois, prouisioun, and foirthocht fellonie.

The pannell, eftir reiding of the Dittay, acknowlegis the offence; and maift humblie craves God and his Maiestie pardoun, and the pairtie, for the same; and offeris him selff in his Maiesteis Will thairfoir.

VERDICT. The Assyse, in ane voce, be the mouth of Andro Cokburne in Treatoun, chancellor, stand, pronuncet and declairit the said James, conforme to his awin Judiciall Confessioun, to be ffylet, culpable, and convict of the said Mutilatioune.

In respect quhairof, the Justice ordanit the said James to be committit to waird within the Tolbuth of Edinburgh, thairin to remane, as ane convict persone, quhill he be advyset with the Lordis of Secreit Counfall, anent his Dome, to be pronuncet aganis him for the said cryme.

[*Mr Alexander Colvill Justice-Depute.*]

Theft—Fire-raising—Slaughter—Intercommuning with the Clan Gregor—Fight of Bintoich, &c.

[THE interest which now attaches to the proscription and subsequent history of the Clan MAC-GREGOR, induces the Editor to prefix a few explanatory remarks to the present Trial; and especially relative to 'THE FECHT' or 'skirmisch' of 'BINTOICHE,' which is taken notice of in the Dittay. The difficulty of obtaining accurate information regarding such proceedings, and the obscurity in which almost all Highland transactions at this period are involved, render this the more necessary; and it is hoped will plead the Editor's apology with those who deem such enquiries uninteresting.]

This Fight or Skirmish of Bintoich, then, is likewise known as 'the Chase of Ranefray,' having been fought, partly, as would seem, at both places; or more probably the Fight took place at Bintoich, and the Chase or pursuit reached as far as Ranefray. '*The Book of Taymouth*'² thus narrates the transaction:—'Attoure, Robert Campbell, second sone to the Laird (of *Glenurquhay*) Sir Duncan, persewing ane great number of them (*the Clan Gregor*) through the countrie, in end overtuik them in Ranefray, in the Brae of Glenurquhy; quhair he slew Duncan Abrok Makgregor, with his son Gregor in Ardchylie, Dougall Makgregor McCoulchier in Glengyle, with his son Duncan, Charles Makgregor (Mc) Cane in Bracklie, quha was principallis in that band; and twenty utheris of thair compleifes slain in the chais.' A contemporary historian, Sir Robert Gordon, in his *History of the Earldom of Sutherland*,³ p. 247, says of this affair, that 'here (meaning at Bintoik, which he had previously mentioned) Robert Campbell, the Laird of Glen-Vrquhie his sone, accompanied with some of the Clanchamron,

¹ Directly before or opposite.

² An extremely interesting Family Chronicle, containing valuable notices of Highland History, and illustrating the genealogy of many families in those districts. The Original is in possession of the Noble family of Breadalbane, and, as the Editor has been informed, is likely to be privately printed for the use of THE BANNATYNE CLUB.

³ This curious work might with much propriety have been styled a *History of Scotland*.

Clanab (McNabs), and Clanronald, to the number of tuo hundred chofen men, faught againft three feore of the Clangregar; in which Conflict tuo of the Clan-Gregar were flain, to wit, Duncan Aberigh, one of the Chieftanes, and his fone Duncan (*Gregor?*) Seven gentlemen of the Campbell's fyd wer killed ther, though they feemed to have the victorie'

It appears rather singular that the slaughter of one of the ClanGregor, at the very time when that Clan was the subject of Letters of fire and sword, should, by the Government, be held a *crime*; more especially when the MacGregors were again in the very same predicament.]

Mar. 2, 1611.—Johnne Mc'kewin, in Kilbryde; Archibald Mc'ilvoyll Mc'lowrin, Donald Mc'inowie, in Glencho; Duncane Caird Mc'gregour, Patrik Mc'ean Dow Mc'gregour, Allafter Bowie Mc'gregour Clerache, Dougall Mc'gregour Clerache Mc'gregour, Duncane Mc'neill Mc'gregour, [Donald Mc'eandich Mc'gregour,¹] Johnne Mc'andro.

Dilaitit, accuset and perfewit be Mr Robert Foullis, substitute to Sir Thomas Hammiltoun of Bynnie, kny^t, Aduocat to our fouerane lord, for his hienes intereis, of the crymes *respectiue* following, viz.—THE said *Johnne Mc'ewin*, ffor airt and pairt of the thiftious Steilling of tuelf fcheip fra the Barrone Mc'caflan, furth of his landis of Innerthonoling; committit in the moneth of August lastbypast 1610 yeiris. ITEM, ffor airt and pairt of the thiftious Steilling of tua gait² and ane fcheip fra Adame Colquhoun in Point, furth of the landis of Banrie, in the moneth of December I^m.Vj^c. and fax yeiris. ITEM, ffor airt and pairt of the steilling of ane pair of pleuch-irnes fra Williame Myller in Schennekillis, furth of the landis of Schennekillis, in the moneth of Apryle I^m.Vj^c. and aucht yeiris. ITEM, ffor cownoun Thift and cownone Refset of thift, inputing and outputing of thift, &c. AND for daylie Intercowmoning and keiping cumpanie with the Mc'GREGOURIS, affisting and taking pairt with thame, in all thair thiftious deidis, heirschipis, robreis and oppreffiones, this thre or four yeir bygane.—THE saidis *Archibald Mc'ilvoyll Mc'Lowren*, and *Donald Mc'Innowie*, servandis to Allafter and Allane Mc'Indowie in Glencho, ffor airt and pairt of the tressonabill Raifeing of ffyre about Johnne Stewartis hous in the Camrone, in the Lennox, in the moneth of December lastbypast; asslageing of Duncane, James, and vmq^{le} Johnne Stewartis thairintill; AND ffor airt and pairt of the slauchter of the said vmq^{le} Johnne Stewart, at the tyme foirfaid.—THE said *Duncane Caird Mc'Gregour*, ffor cownone Thift and Refsett of thift, outputing and inputing of thift, &c. AND ffor daylie Intercowmoning and keiping of tryftis and consul-tationes, with the *Mc'Gregouris*, affisting and taking pairt with thame in all and findrie thair thiftis, reiffis, and oppreffiones, committit be thame this thre yeir bygane.—THE said *Patrik Mc'ean Dowie Mc'Gregour*, ffor being in company with the *Mc'Gregouris*, at the fecht or skirmisch of Bintoiche, in the moneth of Apryle I^m.Vj^c. and four yeiris. AND ffor airt and pairt of the tressonable

¹ 'Tane bak agane to waird, and nocht put to ane Assyse.'

² Goats.

Raifeing of ffyre, burning of the Caftell of Achallader, and of tuentie houffis in Glenlochie; and for the crewall Slauchter of flourfoir ky¹ at the faid fecht. AND ficklek, ffor airt and pairt of the Slauchter of vinq^{le} Patrik Dow M^cnab, and ane feruand of the Laird of Glenvrcheis, namet M^cLayne, baith flane in the faid fecht of Bintoich. AND, ffor cownone Thift, cownone Reflet of thift, outputing and inputing of thift, &c. AND, ffor Intercowmoning and keiping cumpanie with the *M^cGregouris*, in all thair wicket deidis, &c.—THE faid *Allafter Bowie M^cGregour*, ffor Cownone Thift and cownone Reflet of thift, outputing and inputing of thift, fra land to land, fra cuntrie to cuntrie: AND ffor Intercowmoning and keiping daylie tryftis and conventiones with the *M^cGregouris*, and taking plaine pairt with thame in all thair violent and thiftious deidis, thir dyuerfe yeiris bygane.—THE faid *Dougall M^cGregour Clerach M^cGregour*, ffor the crewall Slauchter of vinq^{le} Gregour M^cGregour, fone to vinq^{le} Duncane Abroche M^cGregour, be fchuteing of him with ane arrow behind his bak; committit in Auguft I^m.Vj^c. and four yeiris. ITEM, for Intercowmoning with the *M^cGregouris*, contrair the temour of his Maieftis Acts and Proclamations, at dyuerfe tymes, fen the publicatione of the faidis Proclamations.—THE faid *Duncane M^cNeill M^cGregour*, ffor cownone Thift, cownone Reflet of thift, &c. AND als, ffor Intercowmoning with the *M^cGregouris*, affifting and plane pairt-taking with thame, in all thair thiftious deidis, thir dyuerfe yeiris bygane.—THE faid *Johnne M^cAndro*, ffor airt and pairt of the Burning of Johnne Stewartis hous, and Slauchter of the faid vinq^{le} Johnne Stewart; committit in the faid moneth of December, I^m.Vj^c. and ten yeiris; at the leift, for keiping cumpanie with the faidis Archibald M^cilvoil M^cLauren and Duncane M^cInnowie, and the remanent perfones thair complices, quha come furth of Glenco, to the doing of the faidis crymes.

ASSISA.

Johnne Buntene of Ardoche,	Johnne Buchannane,	Willame Colquhoun,
Parlane M ^c Walter of Auchin-	Andro Cuninghame,	Mr Malcolm Colquhoun,
vannell,	Johnne Logane, fear of Drum-	Malcolm Crawford, feruitour
Mungo Buchannane in Tillie-	chapell,	to the Laird of Blair,
chewin,	James Colquhoun, feruitour to	Robert Blair,
Tho ^s Fallafdaill of Ardoch-beg,	the Laird of Kilbirnie,	David Drummond,
Johnne Stewart in Camrone,	Robert Bradie, feruitour to the	Duncane Menzies.
Jo ⁿ Smyth in Auchindownanrie,	faid James Colquhoun,	

VERDICT. The Affyfe, be the mouth of the faid Thomas Fallafdaill, chancel-ler, ffland, pronuncet and declairet the faidis Johnne M^cewin in Kilbryde, Archibald M^cilvoill, Donald M^cInnowie, Duncane Caird M^cGregour, Patrik M^ceandow M^cGregour, Allafter Bowie M^cGregour, and Duncane M^cNeill M^cGregour, to be ffylet, culpable and convict of the feuerall crymes *refpectiue* aboue writtin, con-

¹ Cattle; *kine*.

tenit in thair Dittayis: AND the said Dougall M^cGregour Clerach, to be ffylet, culpable and convict of airt and pairt of the Slauchter of the said v^mq^{le} Gregour M^cGregour, committit be the said Dougall, he being within the age of tuelf yeiris for the tyme; and ficylk, for Intercowmoning with the M^cGregouris, conforme to the Article of his Dittay. AND ficylk, ffand, pronuncet and declairit the said Johnne M^cAndro, to be Clene, innocent and acquit of the Burning of the said Johnne Stewartis hous in Camrone; and Slauchter of the said v^mq^{le} Johnne Stewart; and remanent poyntis contenit in his Dittay.

SENTENCE. The Justice, be the mouth of Alexander Kennydie, dempfter of Court, decernit and ordanit the saidis *Johnne M^cEwin, Duncane Caird M^cGregour, Patrik M^cIndow M^cGregour, Allafler Bowie M^cGregour, and Duncan M^cNeill M^cGregour*, to be tane to the Burrow-mure of Edinburgh, and thair, in the ordiner place of Executioun, to be hangit quhill thay be deid; and all thair landis, heritages, guidis, geir, moveable and vnmoveabill, &c., to be fforfaltit and efcheit to our fouverane lordis vfe, as convict of the saidis crymes.—AND fuperceidis the pronunceing of Dome vpon the vther thre, quhill he be advyfet with the Lordis of Secreit Counfall thairanent: And ordanit thame to be tane bak agane to their priffone, &c.

[*Mr Robert Cockburne, Advocate, Justice-Depute.*]

Slaughter — Shooting with Pistolets, &c.

Mar. 8.—JOHNE CARUTHERIS in Netholme, sumtyme feruitour to Robert Lord Sanquhair.

Dilaitit of airt and pairt of the crewall and vnumerciefull Slauchter of v^mq^{le} Andro Lyndfay of Raskarrell, brother to v^mq^{le} James Lindfay of Fairgirth, and feruitour for the tyme to my Lord Hereis, be schuiting of him throw the body, with ane pistolett; committit be him and be George Graham, feruitour for the tyme to the said Robert Lord Sanquhair, at the West end of the Brig of Dumfreis, vpon the xvij day of September or thairby, about the down-fetting of the sone, in the yeir of God I^m fyve hundreth fourfcoir faxtene yeiris; off the quhilk fchotte, and be dyuerse vtheris crewall and deidlie woundis, gevin to him with fuordis, quhingeris, and vtheris forbiddin wappones, he fchortlie thaireftir depairtit this lyfe.

PERSEWARIS, James Lyndfay of Fairgirth, Hew Lyndfay, his brother, as brether fones; Sir Thomas Hammiltoun of Bynnie.

PRELOCUTOURIS for the pannell, Mr Thomas Hoip, Aduocat, Mr Johnne Dauling, The Tutour of Bombie (William M^cClellan), The Laird of Enterkyn.

The Aduocat producet the Dittay, and takis instrumentis thairupoun.—The pannell producet Letteris of Relaxatioun, quhairby he is the Kingis frie lege.—The said Johnne Carutheris producet ane Remiffioun, for all crymes preceeding

the dait thairof, and takis him thairto ; and in respect thairof, can nocht pas to ane Assyse. Off the quhilk Remiffioun, of the dait at Quhytehall, the xvij day of November, the yeir of God I^m.Vj^c. and fax yeiris, grantit to him and to Alexander Erle of Home, Lord Jedburgh and Dunglas, Sir Johnne Home of Huttonehall, kny^t, and dyuerse vtheris thair complices, the tennour followis.

REMISSION in favor of the pannell, the Earl of Home, &c.

JACOBUS, Dei gratia, Magne Britannie, francie et Hibernie Rex, defensorque fidei, Cancellario nostro salutem. QUIA, ex nostris specialibus gratia et fauore, Remissimus *Alexandro Comiti de Home, domino Jedburt et Dunglas, et Jacobo Cranstoun* in Huntlie-woid, omnem rancorem animi nostri, sectam regiam et actionem quem seu quas contra dictas personas habuimus, habemus, seu quouismodo in futurum habere vel clamare poterimus, pro arte et parte Oppugnationis et Interfectionis quondam *Leonardi Haidli* in Pleuland, intra domum suam de Pleuland, et Incensionis et Combustionis ejusdem domus per ipsos, in mense Octobri, anno domini millesimo quingentesimo octagesimo octauo commissis. AC ECIAM Remissimus dicto *Alexandro Comiti de Home, Domino Joanne Home* de Huttone hall, militi, *Magistro Samueli Home*, ejus fratri, *Thome Tyrie Tutori* de Drumkilbo, *Alexandro et Joanni Frenches*, fratribus quondam *Roberti French* de Thornydykis, *Joanni Home* in Kello, *Roberto Home* in Huttone, *Roberto Auchineraw* seruitori dicti Comitis de Home, *Joanni Cranstoun* filio Joannis Cranstoun de Morestoun, *Niniano Chirneyde* seruitori dicti Comitis, *Waltero Trumble* de Ramflat, *Roberto Home* filio *Willielmi Home* de Aytoun, *Willielmo, Niniano et Archibaldo Homes*, filiis quondam *Willielmi Home* de St Leonardis, et JOANNI CARUTHERIS, et eorum cuilibet, omnem rancorem animi nostri, sectam regiam et actionem quam seu quas contra dictas personas aut eorum quamlibet habuimus, habemus, seu quouismodo in futurum habere vel clamare poterimus, pro arte et parte Interfectionis quondam *Willielmi Lauder*, Balliui burgi nostri de Lauder, vocat. *Williame at the West-Poirt*, intra Pretorium nostrum de Lanark; ac pro arte et parte proditorie Incensionis et Combustionis dicti nostri pretorij per dictas personas, in mense Maio, anno domini millesimo quingentesimo nonagesimo octauo commissis. AC pro omni actione et crimine que desuper sequi aut contra dictum Comitem seu aliquam reliquarum personarum antedict. inde quouismodo imputari poterint: Et pro omnibus alijs criminibus, transgressionibus et offensis quibuscunque, per dictum Comitem, vel aliquam reliquarum personarum supra specificatarum, vilo tempore preterito, datam presentium preceden. commissi. (Proditiōe in nostram personam, Raptu mulierum, et fabricatione falsæ et adulterate monete, tantummodo exceptis.) QUIA dictus Comes, pro seipso, ac nomine reliquarum personarum antedict. eius complicitum, partibus pro dictis Interfectionibus, ac etiam Balliuis, consulibus et communitati dicti nostri burgi de Lauder, pro reparatione nostri Pretorij antedicti, satisfecit, prout nobis lucide constat. VOBIS Precipimus et mandamus, quatenus Literas nostras Remissionis nostro sub magno sigillo, in forma Capelle nostre debita, supra nominatis personis, super premisis, fieri faciatis. DATUM sub secreto sigillo nostro, Apud Quhytehall, decimo septimo die mensis Novembris, anno domini millesimo sexcentesimo septimo, et regnorum nostrorum annis quarto et quadragesimo.

The Aduocat allegit that the Remiffioun is null ; becaus, be Act of Parliament, it is speciallie provydit, that na Remiffioun fall be grantit for Slauchter without satisfacioun of pairtie, and is null be way of exceptioun ; and this pairtie is nocht satisfeit, ergo, &c.—The pannell offerris to find cautioun to satisfie the pairtie, conforme to the lawis of this realme ; and allegit that his Maiesteis Remiffioun anes being grantit, can nevir thaireftir be callit in questioun, conforme to the daylie practik of this realme ; and repeittis the lyk practik of Aber-

crumbie of Pitmedden contrair Gordones, quhair the lyk Remiffioun was fuftenit, vpon finding of cautioun.

It is forder allegit, that this Remiffioun nather designes quhair the pannell duellis, nather is the cryme it felff speciallie expreffit in the Remiffioun ; and thairfoir, except the faid fact war speciallie expreffit in the Remiffioun, and the pannellis duelling and refidence speciallie designet, the faid Remiffioun is null, and can nocht be admittit.—It is anfuerit, that the pannell is remittit be his Maieftie for Burning of the Tolbuth of Lauder, and Slauchter of the Baillie of Lauder, and all vtheris crymes preceeding the dait of the Remiffioun ; and was than fervand to my Lord Home, quha hes tene Remiffioun ; and the faid Johnne Carutheris name is infert in the Remiffioun with the remanent perfones committeris of the faid Burning and Slauchter, as being in cumpany with him at that fact : Quhilk designatioun of his name to be Johnne Carutheris, with his style, and that he is the perfone remittit, he offeris to preve be famous witneffes present at the bar.—My Lord Aduocat defyret that my lord Justice and Justice-Clerk fould notifie this matter to the Counfall, and to defyre thair Lordfchips to wryte to his Maieftie, to vnderftand of his Maieftie, quhither this Johnne Carutheris be the perfone quhome his Maieftie hes remittit or nocht.

THE Justice continewis this mater to this day aucht dayes, the xv *instantis*.

(Mar. 15.)—The Justice, befoir Interloquitour, inquiret of the perfewaris, gif thai wald verifie ony vther perfone to be namet Johnne Carutheris nor (*than*) this perfone on pannell, quha was at the fact at Lauder, and wald instantlie preve the famyn ? To quhome the perfewar anfuerit, that he wald verifie that thair is dyuerse vtheris fa namit, but had nocht witneffes present ; and could nocht verifie that thair was ony vther Johnne Carutheris at the Burning of the Tolbuth of Lauder.—And the defender, being inquyret, Gif he wald verifie him felf to be the perfone fpecifeit in the Remiffioun ? Anfuerit, that he wald verifie the famyn be the witneffes present at the bar. And for verifeing thairof, producet Johnne Cranftoun, Niniane Chirnefide, Patrik Chirnefide, and Alexander Haitlie. It was allegit be the Aduocat, that thai can nocht be reffaut as witneffes in the faid matter, becaus they ar infert in the Remiffioun as *socij ejusdem criminis* with the pannell, at the fact of Lauder.—Thaireftir it was anfuerit be the pannell, that thai aucht to be reffautet, feing thay war nocht at the Slauchter of Lyndfay, for the quhilk he is this day perfewit ; and fa war nocht *socij illius criminis*.

THE Justice reffaut Johnne Cranftane, &c. : Quhilkis all being fuorne, Declarit, that this Johnne Carutheris, present vpon pannell, was in feruice and companie with my Lord Home at the Burning of the Tolbuth of Lauder, and is the felf-fame Johnne Carutheris fpecifeit in the Remiffioun : Quhairvpoun the pannell askit instrumentis.

THE JUSTICE, be Interloquitour, ADMITTIS the Remiffioun producet; and Ordanis the pannell to find caution to fatisfie the pairtie perfewar, conforme to the lawis of this realme; accoirding to the modificatioun of the Lordis of Sessioun: And als, that the Remiffioun fall be expedit throw the Seillis within fourtie dayis, conforme to the Act of Parliament, vnder the pane of tua hundreth pundis: And that being done, the said Johnne Carutheris to be put to libertie.

For obedience quhairof, the said Johnne Carutheris ffind Williame M^cClellane, Tutour of Bombie, with him selff, caution to fatisfie the pairtie; conforme to the Lordis modificatioun. Lyk as, Johnne Cranstoun, brother to my Lord of Cranstoun, obleist him to exped the said Remiffioun throw the Seillis, within fourtie dayis, under the pane of iij^e merkis.

Mr Johnne Hay, in name of the Bailleis of Edinburgh, tuik instrumentis of the said Johnne Carutheris entrie vpon pannell, and of the Justice Interloquitour aboue writtin, and the pannellis finding of cautione aboue specifit; and in respect thair of, and that the Justice had ordanit him to be put to libertie, Protestit that the Bailleis of Edinburgh shuld incur na harme nor inconvenient for setting of him to libertie. Quhilk protestatioun the Justice Admittit, provyding the said Johnne Carutheris be nocht arreistit at the instance of ony vther pairtie, for ony vther cause.

A bidding from the Raid of the Isles.

Mar. 15.—GILBERT M^cADAME of Watterheid; Donald M^cmillane of Knockingarroche; Robert M^cadame of Smeistoun; George M^cadame, thair; Johnne M^cnacht of Doungucht; Gilbert Achannane of Murdochat; Robert Fergusone of M^ckilliestoun; Johnne M^ckill, elder; Johnne M^ckill, younger; Williame Makadame of Craigullane; Thomas Gordoun of Crago; Johnne Neilson of Corfok.

Dilaitit for the allegit contravening of his Maiesteis Proclamatiounes, in nocht accompaneing and passing fordwardis with Andro Lord Stewart of Vchiltrie, his Maiesteis Lieutenant, in the prosecutioun of his hienes seruice, towardis the repressing of the insolencies of certane the disobedient Inhabitants of the Iles of this kingdome; accoirding to his hienes Proclamatiounes maid to that effect, in the monethis of Maij and Junij, the yeir of God I^m.Vj^e. and aucht yeiris.¹

Compeirit judicillie the saidis Gilbert, &c., and in respect that thai and everie ane of thame had furneist furth sufficient able men to the said Leutenent in the foirsaid Expedition, and thairupoun had purchest the said Lord Leutenentis Testificat, with his Licence to abyde at hame them selffis, and nocht to pas fordward with his Lordschip, in the said Airmie: Quhilk Licence thay producet

¹ See Notice prefixed to the Trial of *Sir James Makconill*, May 13, 1609, Vol. III. p. 1, &c.

in Judgment to the Justice, vnder the said Lord Leutenentis subscription, daitit at Air, the xxvij of Julij, I^m.Vj^c. and aucht yeiris. And protestit, that thai nor nane of thame sould be ony wayis trubillit, vnlawit, or persewit for the caussis aboue mentionet; bot that thai and ilk ane of them sould be Affoilzeit *simpliciter* thairfra, in tyme cuming: Quhilk Protestatioun the Justice admittit.

And in respect that the said Andro Lord Stewart of Vchiltrie, his Maiesteis Lieutenent foirsaid, being personallie present, quha affirmet the Licences aboue written, and granting thair of to be of veritie, Ordanit that nane of the persones foirsaidis sould be callit or trubillit for abyding fra the said Raid of the Iles, in ony tyme coming. Quhairupoun the saidis persones askit instrumentis.

Slaughter.

Mar. 16.—JOHNNE HAMMILTOUN of Hairschaw; Gawin and Archibald Hammiltoun, sones to the said Johnne; Symone and Williamie Hammiltoun, brether to Hairschaw; Williamie Hamniltoun, brother-sonne to Hairschaw; James Lyddell, sone-in-law to Hairschaw; and Mathow zounge, in Langlie.

Dilaitit of the Slauchter of vmq^{le} Johnne Findlay in Eglischem; quha was slane at the Kirktown of Eglischem, vpone the xvij of ffebruare, 1611.

PERSEWAR, Archibald ffyndlaw, as brother to vmq^{le} Johnne Fyndlaw.

The Justice, of consent of pairtie, continewis this matter to the thrid day of the nixt Justice-air of the scheref dome quhair the persone abouewrittin duellis¹ (Lanerk.)

[*Sir Williamie Heart, Justice-Depute.*]

Slaughter of Provost of Wigtoun—Shooting Hagbuts, &c.

Maij 22.—JOHNNE KENNYDIE of Blairquhan, and Johnne Bairdis, brother germane to the Laird of Kilquhinzie.

Dilaitit of airt and pairt of the felloun and crewall Slauchter of vmq^{le} Patrik Ahannay of Kirkdaill, Proveist of Wigtoune; committit be thame and thair complices, with schottis of hagbuttis and pistolettis, at the Cruves of the Watter of Crie, in the moneth of December, I^m.Vj^c. yeiris, vpone set purpois, prouisioun, and foirthocht felonie: And for beiring, weiring, and schoitting of hagbuts and pistolettis, contrair the tennour of the Actis of Parliament.

PERSEWARIS, Patrik Ahannay of Kirkdaill, as sone to vmq^{le} Patrik A.; Sir Thomas Hammiltoun of Byris, kny^t, Aduocat to our souerane lord, for his Maiesteis intereis.

PRELOCUTOURIS for the pannell, My Lord of Cassillis, My Lord Vchiltrie, Gilbert Roifs; Mr Johnne Russell, Mr Thomas Hoip, and Mr Laurence M^cgill, Aduocatis.

The pannell acceptis the summondis, and speciallie that pairt thair of quhair

¹ ‘Plegijs, Hugone Montgomerie de Auchinhuid, et Joanne Hammiltoun de Hairschaw, pro omnibus; et ipsi ad relevand.’

the defunct was schot with peiftis¹ or dropis, with ane charget hagbut. It is allegit, that this matter can nocht pas to ane Assyse; becaus his Maiestie, of his speciall grace, hes gevin to the perones on pannell ane Remissioun, quhilk thai producet to the Justice, of the dait at Edinburgh, the xvij day of Maij instant: And offeris Cautiounne to satisfie the pairtie.—It is answert that this Remissioun can nocht stay the matter to pas to ane Assyse; becaus, be Act of Parliament, in anno 1593, it is provydit, that all Remissiones ar null that ar purchest eftir ane pairtie passis to the horne for the tyme; quhilk allegiance is ressaunt be way of exceptioun, the pairtie nocht being satisfeit.—It is answert,² that this Act of Parliament is nocht *in viridi obseruantia*, nor hes nocht tane effect in this Judgement of befor: Quhilk allegiance he offeris to verifie, be my Lord Cassillis, and vtheris heir present.

THE Justice continewis Interloquitour vpon this allegiance to ffryday nixt.

(Maij 24.)—My Lord Aduocat, befor Interlocutour, passes fra his lordschipis former allegiance: Quhairupoun the pannell takis instrumentis.

THE Justice, be Interloquitour, Admittis the Remissioun producet be the perones on pannell and thair prelocutouris; and Ordanit thame to find sufficient and responfall Cautioun and fouertie to satisfie the pairtie grevit; conforme to the lawis and daylie practik of this realme.

Quhairupoun the said Johnne Kennydie of Blairquhan and Johnne Bairdis askit instrumentis: And ffor obedience of the said Justice Ordinance, nominat my Lord of Cassillis, my Lord Vchiltre, Sir Robert McClellane of Bombie, kny^t, Williame Cunninghame of Capringtoun, and Sir James Kennydie of Culzeane, as cautioneris, coniunctlie and feuerallie for thame; lyk as, being all personallie present, in prefence of the Justice, Band and obleist thame, coniunctlie and feuerallie, thair airis, executouris and assignais, to satisfie the pairtie, viz. the kyn and freindis of the said vmq^{le} Patrik Ahannay of Kirkdail, ffor the slauchter aboue writtin; conforme to the Lawis of this realme.³

¹ Pellets, small shot; but, most probably, what is now termed *slugs*. ² Replied. ³ The arguments are thus expressed in an after part of the Record. As the point started is interesting, and the Counsel engaged were the most eminent of their day, it has been deemed proper to preserve the arguments at length.—It being peremptourlie allegit for the pairt of the saidis perones on pannell, be Mr Johnne Russell, with concurrence of Mr Thomas Hoip and Mr Laurence McGill, Aduocatis, thair preloquitouris, that the said summondis and Dittay could nawayis be put to the knowlege of ane Assyse, becaus our foverane lord, of his speciall grace and mercie, had gevin and grantit to thame ane Remissioun for the saidis crymes, and producet the said Remissioun, past the Grit Seill, of the dait at Edinburgh, the xvij day of Maij instant; quhairvnto thai tuik thame selfis, and offerit responfall cautioneris and fouerteis, at the bar, to satisfie the pairtie for the crymes contenit in the said Remissionne, according to the modificatioun of the Lordis of Sessioun, lawis and practik of this realme. To the quhilk it was answert be our foverane lordis Aduocat, that the foirsaid allegiance aucht to be repellit, and the pannell, nochtwithstanding thair of, shuld be put to the knowlege of ane Assyse; becaus, be Act of Parliament maid in anno 1593, it is statute and ordanit, that na Respekt nor Remissioun be grantit at ony tyme thaireftir to ony persone or perones passand to the horne for Thift, Reif, Slauchter,

The pannels bound themselves to relieve their cautioners; and the cautioners also obliged themselves to free each other, *pro rata*, &c.

Slaughter—Shooting with Hagbuts and Pistolets, &c.

JUN. 7.—ROGER GORDOUN in Glasniche, and Johnne Glendoning of Drumrafsche.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} George Stewart, brother to vmq^{le} Mathow Stewart of Dunduff; committit the xxj¹ of September, 1601 yeiris, vpone fett purpois, prouisioun and foirthocht fellonie: And als, for beiring, weiring, and schuitting of hagbuttis and piftolettis, contrair the tennour of the Actis of Parliament.

PERSEWARIS, Williame Stewart of Dunduff, Johnne Stewart, brether fones.

The persewaris producet the Letteris deulie execute and indorfate vpone the said Roger Gordoun and Johnne Glendoning; and als, vpone Alexander Gordoun of Hillis, Williame and Robert Gordones, his tua brether, Robert Gordoun of Bannernie, Alexander Creichtoun in Garrick, and Thomas Creichtoun in Balcaffie, quha ar past to the horne for the crymes contenit in the Letteris: And vpone the productione thairof, askit instrumentis; and protestit for the cautioneris relief for repoirting thairof.

Continewit to the morne. Plegio, Wilelmo M^cculloche de Mertoun.

PRELOCUTOURIS for the pannell, Mr Johnne Russell, Aduocat, The Laird of Lochinvar.

(JUN. 8.)—The persewaris declairit, in respect that this Roger Gordoun is only airt and pairt of the Slauchter, and nocht principall actor of the fact, and thairfore, vnto the tyme the principall maliefactouris be apprehendit, quhairby the pannell his giltines or innocencie of that crewall slauchter may be tryit, desyres that he may be continewit to the thrid day of the air [Wigtoun], or soner, vpone xv dayis wairning; and that caution be fund be him to that effect, vn-

Burning, or Heirschip, &c. quhill the pairtie skaithed [viz. until the party shall previously have received pecuniary satisfaction or damages for the loss sustained] be first satisfeid: And gif ony sic Respet or Remissioun shold happin to be grantit, befor the pairtie grevit be first satisfeid, the samyn fall be null, and of nane availl, be way of exceptioun or reply, without ony forder declaratour. Bot trew it is, that the perfonen on pannel, lang befor the purchessing of the said Remissioun, war denounced rebellis and at the horne, and war declairit fugitiues fra his hienes Lawis for the saidis crymes contenit in thair Dittay; the pairtie naways being satisfeid as zit: And thairfor, the said Remissioun vsiet and producet is null, be way of reply. And for verifeing thairof, producet the Extract of the Hoiring aganis the pannell.—To the quhilk it was duplyt be the pannell, that thay offerit thame to preve, be my Lord of Caffilis, and tua Ministeris, at the bar, that satisfacioun was offerit be thame to the pairtie grevit, lang befor thair passing to the horne, or purchessing of Remissioun; quhilk was refusiet: *Secundo*, it was nevir in *viridi observantia* that the foirfaid Act of Parliament was authorisiet in this Judgement; nather yit could euir his Maiesteis fauour and pardoun, being anes grantit, be callit thair-efir in questioun. And thairfor, takis thame, as of befor, to his Maiesteis Remissioun; and offerit caution to satisfe the pairtie.'

¹ In the act of caution the slaughter is stated to have been committed on the 'ellevint.'

der the panes contenit in the Actis of Parliament. [*Plegio, Wilelmo M^cculloche de Mertoun.*]

The Laird of Mertoun americiated ‘in the pane of ffyve hundreth merkis, for nocht entrie of the said Johnne Glendoning’ on June 8, and Glendoning ordained to be denounced rebel, and all his ‘moveabill guidis to be efcheit,’ &c.

Slaughter.

Jun. 28.—PATRIK MAXWALL of Newark.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Robert Montgomerie of Skelmourlie, and vmq^{le} Williame Montgomerie apperand of Skelmourlie; committit in the moneth of I^m.V^c.lxxxiiij yeiris.

PERSEWAR, George Montgomerie.

The Laird of Newark productet ane Warrant of the Lordis of Secreit Counfell, direct to the Justice, anent the deserting of this dyet, for the reffonis contenit in the Supplication gevin in to thair Lorfchipsis thairanent; with ane Command on the bak of the said Supplication and Warrant aboue writtin, commanding the Justice to tak cautoun of ather of the pairteis, befor thair cuming out of Judgement, that thai fall remane and keip waird within this burgh, quhill Tyfday nixt; and that thai fall compeir befor his Maiesteis Counfall the said day, vnder the panes following, viz. of Newwerk, vnder the pane of tua thousand merkis, and George Montgomarie, vnder the pane of ane thousand merkis. Quhilk Warrant is daitit at Edinburgh, the xxvij day of Junij 1611 instant.—For obedience of the quhilk Warrant, and ordinance thairin contenit, the Justice Defertit the said dyet; and Ordanit the saidis tua pairteis, *hinc inde*, to find cautoun for thair compeirance befor the Lordis of Secreit Counfell the said day, viz. the secund day of Julij, vnder the panes aboue specifcit: Lyk as, for obedience of the said Justice ordinance, compeirit Williame Lord Kilmaweris, and became plege and fouertie for the said Patrik Maxwell; and siclyk, compeirit James Dunlope of that Ilk, and become fouertie for the said George, &c.

Slaughter.

[THE Records of the Court of Justiciary do not afford sufficient information regarding the facts connected with the following Case; and, as it relates to individuals of considerable rank, the Editor thought it proper to select even such meagre notices as those which do occur. The Young Laird of Closeburn seems to have been one of the active spirits of these times, and to have been engaged in a laudable share of affairs of honour, and in quarrels *quantum sufficit*, and ‘befitting his degree!’]

In *Lord Hadington's MS. Collections*, the following remarkable entry occurs, under date Feb. 27, 1610. ‘The Lady Hemptisfeild, haveing desyred Andro Quhyt, keiper of the Tolbuith, to bring to hir Young Cloisbyrne, who wes in the Tolbuith wairdit, to speak with hir in his house; he doing it at her desyre, Young Cloisburne schifftit him self away. For the quhilk caus, scho being put in the Tolbuith, and thairafter transported to the Castell, socht Licens of the Counfall to be transported to the

toone; quhilk the Lordis refuiffed, vnles fcho wald aither enter Young Cloisburne, or find cautionne to fatisfie all pairteis be quhome he wes wairdit or arreifted.¹

Closeburn's escape had been effected by his exchanging clothes with the Lady Hemptisfield, a method which has often proved successful in similar emergencies. It may be remarked, that the jailor's house was commonly attached to, or rather consisted of one or more apartments of, the prison.]

JUN. 28.—ALEXANDER KIRKPATRIK, fone to Sir Thomas Kirkpatrick of Cloisburne, kny^t.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} James Carmichell, fone to Johnne Carmichell of Spoth.

PERSEWARIS, Johnne and William Carmichell.

THE Justice, of consent of pairtie, continewis this dyet to the xxiiij of Julij nixt. [Plegio, D. Tho. Kirkpatrick de Cloisburne, milite.]

(Jul. 24.²)—THE Justice, of consent of pairtie, continewis this mater to the thrid day of the nixt Justice-air of the scherefdome of Dumfreis, or foner vpone fyftene dayis wairning: And ordanis cautionn to be ffund for that effect. [Plegio, D. Thoma Kirkpatrick de Cloisburne.]

Treason—Murder under Trust.

JUN. 29.—PETER WEIR, funtyme in Goitnow in Rig.

Dilaitit of airt and pairt of the crewall Slauchter and Murthour of vmq^{le} Johnne Hammiltoun, merchand burges of Edinburgh; committit, vnder treft, vpone the fevint day of November 1608 yeiris, befyde Monharig burne-fute.

PERSEWARIS, Jonet Small, the relict; Patrik Hammiltoun, as brother; Sir Thomas Hammiltoun of Byres, kny^t, Aduocat to our fouerane lord, for his hienes intres.

PRELOCUTOUR for the pannell, Robert Bannatyne, wryter.³

DITTAY *against Peter Weir, the pannell.*

FORSAMEKILL as vmq^{le} Johnne Hammiltoun, merchand burges of Edinburgh, haifing conqueift⁴ and acqyret to him self the richt of certane landis, occupyit and posselt be Johnne Weir in Over Quhytecleuch, the said Peter Weir, and Margaret Weir in Bagra; and haifing thairupoun obtenit Decreitis of Removing, aganis thame and remanent tennentis and occupyeris of the saidis Landis; and for disobedience of the charges of Hoirning, haifing denuncet the said Peter owr fouerane lordis rebell, and put him to the horne, the said Johnne Weir, Mungo Weir, his brother, the said Peter Weir, and Margaret Weir, consultit and devyset amangis thame felfis, how to bereiff the said Johnne Hammiltoun of his lyfe: And for effectuating thairof, caufit certane freindis travell with him, and to cum in tryfting,⁵ and to meit at Monharig, to cownone⁶ thairupone; and affixt the

¹ Minutes of the Proceedings of the Privy Council, *Had. MSS.* A. 4. 22. Advocates' Library.

² The pursuers marked at this diet, are designed 'Johnne C. of Spoth, Williame C. his fone.'

³ One of the brothers of the celebrated George Bannatyne, in honour of whose valuable compilation of early Scottish Poetry, the Club of that name was formed.

⁵ By special agreement or appointment.

⁶ Commune.

sevint day of November I^m.Vj^c. and aucht yeiris to that effect : Lyk as, the said vmq^{le} Johnne Hammiltoun, for keiping of the said tryft, accompaneit with James Creichtoun in Bar, being cuming rydand furth the hie way, in sober and quyet maner for the tyme, vpone the said sevint day of November, to the appointit place aboue writtin, the saidis Johnne Weir, Peter Weir, Mungo Weir, and Margaret Weir, accompaneit with dyuerse perfones thair complices, being bodin with fuordis, quhingeris, kent-stalfis and otheris wappones *invasiue*, darnit¹ thame felfis in the hie way, besyde Monharig, quhair thai lay at await for the said vmq^{le} Johnne Hammiltounes by-cuming ; and thair, vnder trest and friendship, maist crewallie invaidet him for his slauchter, drew him af his hors, and with quhingeris, gaif him threfcoir² bludie woundis, in dyuerse pairtis of his body, to the effusioun of his bluid in grit quantitie ; and crewallie slew and murtherit him out of hand : And the said Peter was and is airt and pairt of the said Murthour. To the taikin, he and the said Margaret Weir, being in cumpanie with the said Johnne Weir, com to the said James Creichtoun, and drew him down af his hors, and held him be force down, quhill the said vmq^{le} Johnne was murtherit out of hand ; quhairthrow the said James mycht nocht releif him.

James Creichtoun, being suorne, Declairit, that he, being in company with the defunct, the tyme lybellit, vpone the grund of the Land quhair the fact was committit ; and thair, this Peter Weir, with Margaret Weir, drew him af the hors and held him down ; quhairthrow he was nocht able to defend the defunct. — Quhairupoun my Lord Aduocat askit instruments ; and Protestis for Wilfull Errour, gif the Assyse acquit.

VERDICT. The Assyse,³ being ryplie and weill advyset thairwith, togidder with the said Peteris Depositiones, producet be our fouerane lordis Aduocat ; togidder with the Letteris of Hoirning, quhairby the said Peter was fugitiue fra his hienes lawis, for the said cryme, lykwayis producet, for instructing of the Dittay ; thai, be the mouth of Robert Phillope, burges of Sanquhair, ffind, pronuncet, and declairit the said Peter Weir to be ffylet, (be pluralitie of voitis,) of airt and pairt of the Murthour of the said vmq^{le} Johnne Hammiltoun.

SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair his heid to be strukin from his body : And his haill guidis and geir to be escheit to our fouerane lordis vse, &c.

Treason — Slaughter — Murder under Trust, &c.

[THE TRIAL of the MURES of AUCHINDRAYNE may, without hesitation, be pronounced to be one of the most remarkable, in the whole range of the Criminal annals of this, or perhaps of any other country. In it are unfolded their most hidden transactions, and the secret springs of their most private and craf-

¹ Concealed. ² Three score ; sixty.
and James M'Morrane younger of Glaspen.

³ Among their number were George Maxwell of Drumcowtrane,

tily contrived plots, all of them leading to the perpetration of crimes so singular in atrocity, and of so deep a die, that one can hardly expect to meet with their parallel, even in the pages of Romantic fiction. By the clew, now afforded, may be traced almost the secret thoughts of two of the most accomplished and finished adepts in crime—individuals who murdered by rule, and who carried forward their deadly schemes of ambition, by means of a regularly connected chain of plots and stratagems, so artfully contrived, as to afford them every reasonable prospect of success—and even in the event of the entire failure of their plans, almost to ensure their escape from suspicion; at the least, in their estimation, to warrant their security against ultimate detection, and consequently exempt them from the penalty of capital punishment.

Ambition and the lust of power appear to have been the immediate procuring causes of all the crimes in which these infatuated men were involved. Theirs was not the sudden burst of ungoverned passions, which might have hurried them on to the commission of a solitary deed of frightful but unpremeditated violence—nor were their crimes the consequence of ancient Feuds, inherited from their restless and vindictive ancestors—nor yet had they the too common apology that they originated in impetuous assaults made upon them, and that their hasty quarrels sprung from a fiery and unbridled temper, which had unfortunately terminated in fatal results. On the contrary, the whole of their numerous attempts and crimes may be characterised as cool, calculating, and deliberate acts, anxiously studied, and by slow and patient, but sure degrees, matured and prosecuted, for a long series of years, until at length ‘the measure of their iniquities overflowed,’—and the unlooked-for concurrence of an extraordinary train of circumstances, the most unlikely to have happened, eventually led to a triumphant discovery of their enormous crimes.

It is quite unnecessary here to enter into any detailed account of the facts connected with the crimes of these individuals. Their leading features are already familiar to all, ever since the publication of ‘AUCHINDRANE, OR THE AYRSHIRE TRAGEDY,’ from the pen of Sir Walter Scott; in the preface to which dramatic sketch, the origin and progress of these dark transactions are so fully discussed, that the Editor begs simply to refer the reader to a perusal of that work.

In addition to the information contained in the ‘Dittay,’ and in the pleadings in this Trial, the Editor has been anxious to collect and lay before the reader the most remarkable circumstances connected with the history of the elder and younger Mures. For this purpose he has for some years past used all exertions to extend his researches in every direction, where authentic illustrative Documents and Records could be procured—and he has now the satisfaction of appending to this highly interesting Case a variety of Papers, which may almost be said to throw all the light that can now be reasonably expected, on proceedings which occurred now above two hundred and twenty years ago.

For the sake of saving too copious quotations in this work, the Editor has, through the liberal permission of the Curators of the Library of the Faculty of Advocates, Edinburgh, published in a separate volume ‘THE HISTORIE OF THE KENNEDYIS,’¹ from the Original MS. in their valuable collection. That History, besides the numerous interesting notices of the Mures of Auchindrayne, Sir Thomas Kennedy of Colzean, who ultimately fell their victim, the Earls of Cassilis, &c., enters most minutely into the Feuds and Conflicts of the Kennedies, Mures, Crawfords, &c., and satisfactorily develops the causes out of which the various crimes of Auchindrayne and his son sprung. The state of society, and the habits and manners of the people of Carrick, are very graphically delineated by the author, who was evidently an eye-witness of the many interesting transactions he has recorded.

For the purposes of the present Introductory Notice, it is enough to state, as in reference to the persons who principally figure in this dark tragedy, that so far as respected birth, the MURES OF AUCHINDRAYNE were of most respectable and ancient extraction, and were connected with many of the most opulent and influential families in Ayrshire. They also for a considerable period held a con-

¹ A limited impression of the ‘HISTORIE OF THE KENNEDYIS’ has been printed, uniformly with the works of THE BANNATYNE and MAITLAND CLUBS, and may be had of the Publishers of this Collection.

spicuous station in all the transactions and feuds of the district of Carrick. There is no reason to doubt that the Mures of MONYHAGEN and Auchindrayne (which last title was only latterly assumed by them) were cadets of the very ancient and honourable Family of Mure of Rowallan, now represented by the present Marchioness of Hastings, as Countess of Loudoun, &c. In confirmation of this fact, Sir William Mure of Rowallan, knight, in his *History of that House*,¹ states, that *Andrew Mure of Monyhagen*, the first of the family, was either a son or a grandson of Sir Gilchrist Mure, who died *circa ann.* 1280. It does not appear how or when they became possessors of the Lands of Auchindrayne; but it is certain, that previous to the Wars of Bruce and Baliol, Auchindrayne (i. e. *the Field of Thorns*) belonged in property to Robert Brown; and was, upon his forfeiture, granted by King Robert the Bruce to Henry Annan. By a Charter, dated March 16, 1498, *James Mure of Monyhagen* granted certain lands, in Wigtonshire, in favour of James Mure, his son, and Margaret Wallace, his spouse. One of the witnesses to this deed, is *John Mure*, ‘grandfon and heir apparent of the said James;’ which shews him to have been a very old man at that period, and that he was born *circa* 1430. This *John Mure* must have been the grandfather of the old Laird of Auchindrayne, who figures in the present Trial.

It is pretty evident, as appears from a Charter of *Novodamus* of the Lands of Leffenhill, dated Sept. 29, 1671, by Chalmers of Gadgirth, in favour of *John Mure of Auchindrayne*,² that the elder Mure must have been *nearly eighty years of age* at the period of his execution! The grantee is described as heir of *John Mure of Monyhagen*, ‘*prouvi*,’ who had in like manner had a Charter of same Lands from Campbell of Loudoun, Sep. 2, 1550.³—This *John Mure*, who obtained the above mentioned Charter 1671, married Bethia Hamilton, daughter of Hamilton of Dalzell, by whom he had at least one son *James*, who probably predeceased him—for he conveyed Auchindrayne to his brother *Hugh Mure*, whose son or grandson sold it early in the last century; and the Family, it is believed, is now extinct in the male line.

To return to *John Mure Elder*, and *James Mure Younger of Auchindrayne*, the subjects of the following Trial, it is worthy of notice, as proving their rank and consequence in the most convincing manner, that *John Mure* the elder married Margaret Kennedy, second daughter of Sir Thomas Kennedy of Bargeny, (*obit*, Nov. 7, 1597,) by Lady Agnes Montgomery, sister to Hugh, *third* Earl of Eglington,—and that *James Mure* the younger married Helen, second daughter of Sir Thomas Kennedy of Colzean, Tutor of Cassilis, by Dame Elizabeth MacGill, daughter of David MacGill of Cranstoun-Riddell, King’s Advocate, and relict of the celebrated Robert Logan of Restalrig.

On occasion of John, fifth Earl of Cassilis, going on his travels to France, he conferred THE BAILLIARY OF CARRICK upon the elder Auchindrayne, for all the period of his life, an office of high trust and respectability, having the Civil and Criminal Jurisdiction of the whole of that extensive and populous district. It had previously been enjoyed by Kennedy of Blairquhan, one of the most powerful Chiefs of the name of Kennedy. The Earl had previously given Auchindrayne grants of a five-merk-land and a two-merk-land, in return for his fealty and service; and besides, ‘the said John to be one his chargis enier quhan he ves out of Carrik.’⁴ Through the influence, as was asserted, of Sir Thomas Kennedy of Colzean, the Tutor of Cassilis, this office was recalled on the Earl’s return, which probably gave rise to the deadly grudge of Auchindrayne, and, after the lapse of many years, eventually terminated in his murder. After the period of this recall, Auchindrayne returned to the allegiance of the Laird of Bargany, and took a most active lead in all the feuds of that disturbed country.

As the most copious materials occur in the Illustrations appended to the present Trial, and in the ‘*Historie of the Kennedys*,’ relative to all the transactions of Auchindrayne, the Editor will not en-

¹ Written in or prior to 1657, and printed from the original MS. Crown 8vo, Glasgow, 1825.

² He was eldest son of *Sir John Mure of Auchindrayne*, who was eldest son of *James Mure younger of Auchindrayne*, executed along with his father for the Murder of Dalrymple.

³ See Particular Register of Sasines for Ayrshire, II., 613, where numerous entries occur; but it would be foreign to the purposes of the present work to enter into lengthened genealogical detail and proofs.

⁴ See *Historie of the Kennedys*, 4to, Edin. 1830, pp. 18, 19.

croach on the prescribed limits of this work, by entering into farther detail. It is hoped that enough is there given to gratify the most anxious enquirer.

Among other curious matters which are mentioned in the present Trial, there occurs the ancient and almost universal superstition, that *the body of a murdered person bleeds at the approach, or at least on the touch, of the Murderer !* This test of guilt, or ordeal, is so remarkable, that the Editor has made every investigation which his opportunities admit ; and lays the result before the reader, in the Appendix.]

Jul. 17.—JOHNE MURE OF AUCHINDRANE, elder ; JAMES MURE, younger of Auchindrane ; and JAMES BANNATYNE of Chapeldonall.

Dilaitit of airt and pairt of the tressonabill Murthour of vmq^{le} SIR THOMAS KENNYDIE of Culzeane, knycht, Tutour of Caffilis, vnder trust, &c. ; committit be the said Johnne Mure of Auchindrane elder, in forme and maner, and at the speciall tyme sett down in his Dittay. AND als, for the tressonabill Murthour of vmq^{le} WILLIAME DALRUMPILL, in Air ; committit be the saidis Johnne Mure, elder of Auchindrane, (James Mure, younger of Auchindrane,) and James Bannatyne, in forme and maner also contenit in the Dittay, produceit be our fouerane lordis Aduocat aganis thame.

PERSEWARIS, James Kennydie of Culzeane, as sone to vmq^{le} Sir Thomas Kennydie of Culzeane, kny^t, Tutour of Caffillis ; Bessie Dalrumpill, as mother to vmq^{le} Williame Dalrumpill ; Sir Thomas Hammiltoun of Byres, knycht, Aduocat to our fouerane lord, for his lienes interes.

PRELOCUTOURIS for the persones on pannell.

Mr Johnne Ruffell, Aduocat ; Mr Thomas Nicollfane, Aduocat ; Josephe Myller, Aduocat.

My lord Aduocat producet the Dittay aboue (under) writtin.

DITTAY *against* JOHN MURE, *elder of Auchindrane* ; JAMES MURE, *younger of Auchindrane* ; and JAMES BANNATYNE, *sometime in Chapeldonane*.

JOHNE MURE, elder of Auchindrane, James Mure, younger of Auchindrane, and James Bannatyne, sumtyme in Chapeldonane, Ye and everie ane of yow, for your owne pairtes, *respectiue*, ar Indyted and accused of the haynous, crewall, and tressonabill crymes vnderwrittin : FORSAMEKILL AS, be Act of Parlement, maid be oure fouerane lord and Estaittis of this kingdome, in the moneth of July, 1587 yeiris, cap. 51, it is statute and ordaned, that the Mourthour or Slauchter of whatsumever our fouerane lordis liegis, whair the pairtie flayne is vnder the traift, credit, assurance, and power of the flayer, all sik Mourthour and Slauchter to be committit efter the dait of the said Act, the samin being lauffullie tryed, and the perfoun dilaited, fund guiltie be ane Affyse thaireof, fall be Treasoun ; and the persones fund culpabill, fall forefault lyfe, landis and guddis. AND TREW IT IS, that ye, the said *Johne Mure, elder of Auchindrane*, haiving, without any iuste cause, conspyred the Mourthour of vmq^{le} SIR THOMAS KENNEDIE of *Cullayne, knight*, in the moneth of Januar, or thairby, 1597 yeiris, accompanyed with sevin or aucht of your complices in the said interpryse, came

to the Towne of Maybole, and being furelie informed that the said Sir Thomas wes than soupping, vpon the day of the said moneth of Januar, in the howse of Sir Thomas Nisbett in Maybole, and wes to pafs, efter supper, from that pairt to his owne howse; ye and your said complices, bodin in feir of weir,¹ with hagbuttis and pistolettis, and vtheris forbiddin and vnlauffull wapinis, dairnit² your self, vnder silence of night, about nyne or ten houres at evin, in ane obscure place, by the whilk³ the said Sir Thomas Kennedies passage laye; and, so sone as ye persaued him, ye fercelie set vpon him, persewed him with all violence and crueltie for his slauchter, schot and delaschit⁴ at him ane great number of schottis of hagbuttis and pistolettis, and still chaiffit and persewed him; whill,⁵ be the Providence of God, and releif of honest nightbouris, he wes delyuered from your crueltie. For the whilk vyld and barbarous offence, ye being summond to vnderly the law, (wes) forced be your owne notour guiltines to go to the horne. THAT feid and inimitie wes schortlie thairefter removed, not onlie be publict and sworne reconciliation maid betuix the said vmq^{le} Sir Thomas Kennedie and yow, the said Johne Mure of Auchindrane, bot also confirmed and strenthened, be allyance and mairiage of your eldest sone vpone the said Sir Thomas his dochter; whairby the said vmq^{le} Sir Thomas wes drawin vnder sik traist, assurance and freindschip with yow, that he, lipning⁶ altogidder to the same, vpon the tent day of May, the yeir of God 1602 yeiris, being of intentione to ryde to Ed^r for his lauffull buffines, and having no less cair of your turnis⁷ nor of his owne,⁸ he send his seruand, Lancelot Kennedie, to wryte aduerteisment to yow, that he wes to tak his journey towardis Ed^r vpon the nixt day, whilk wes the elleuint day of May, 1602 yeiris, or thairby; to the effect ye might meit him vpon the way, at the Duppil, a littill be-west the burgh of Aire, and informe him of sik buffines as ye wald desyre him to do for yow in Ed^r. Whilk aduerteisment, being writtin at desyre of the said Lancelot Kennedie, be Mr Robert Mure, than schole-maister of Aire, your kinsman, he sent that his Letter to yow, with ane scollar boy, being in his schole for the tyme, called *Williame Dalrumpill*; whilk letter cumming to your handis that efternone that it wes writtin, vmq^{le} Walter Mure in Cloncaird being than in cumpanie with yow, in your place of Auchindrane, ye dispatchit bak the said William Dalrumpill, in haist, directing him to returne to Maybole with diligence, and to deny that he had met with yow, or delyuered the Letter to yow: And incontinent thairefter, consulted and resolved with the said vmq^{le} Walter Mure of Cloncaird, to aduerteis Thomas Kennedie of Drumvrquhie, your gude-brother,⁹ of the certaintie of the

¹ Arrayed in warlike manner. ² Hid, concealed. ³ Past which. ⁴ Let off, fired.
Fr. *delascher*. ⁵ Until. ⁶ Trusting, confiding. ⁷ Affairs or matters. ⁸ Than of his own.
⁹ Brother-in-law.

faid vmq^{le} Sir Thomas Kennedie of Cullayne's journey, and of the way whilk he intended to ryde, advyſing the ſaid Thomas Kennedie of Drumvrquhie to uſe that occaſion to Mourthour the ſaid Laird of Cullayne, in reuenge of the Slauchter of the vmq^{le} Laird of Barganie; whair of the Laird of Cullayne wes altogidder innocent: And conforme to your ſaid develiſh reſolution, ye, having aduerteiſed, and perſuaded, and inſtigat the ſaid Thomas Kennedie of Drumvrquhie to interpryſe the ſaid treaſonabill Murthour, alſweill be your meſſage ſend to him be the ſaid vmq^{le} Walter Mure of Cloncaird, as be ane vther Letter ſend be yow to him with Makadam, your eldeſt ſones ſeruand for the tyme; the ſaidis Thomas Kennedie of Drumvrchie and the ſaid vmq^{le} Walter Mure of Cloncaird, accompanied with fyve or ſax of thair complices, vmbefet the ſaid vmq^{le} Sir Thomas his hie-way, neir the pairt whair he had tryſted to meit yow, and vpon the ſaid ellevint day of May, 1602 yeiris, be your aduerteiſment, counſall, and inſtigatioun foirſaid, cruellie and treſſonablie Mourthoured and flew him, vnder traift, credit, and aſſurance; of your cauſing, command, counſall, and ratihabition;¹ ffor the whilk treaſonabill cryme, the ſaid Thomas Kennedie of Drumvrquhie ſtandis forfeitit be Parlement. Notwithſtanding whair of, ye, at all tymes ſen the ſaid treaſonabill Murthour, aſſiſted and ſupported the ſaid Thomas Kennedie, bothe within this cuntrie and ſen his going furth thair of; and hes keiped ordinar intelligence and correſpondence with him. AND ye, the ſaid Johne Mure of Auchindrane, ar airt and pairt of the ſaid cruell and treaſonabill Murthour, and aucht and ſould be forfeitit, and vnderly the pvneiſment of treaſon for the ſame. LYKE AS, ye, feiring the diſcouerie of your guiltines of the ſaid Treaſonabill Mourthour, be the taking, tryall, and examinatioun of the ſaid Williame Dalrumpill, for eſchewing thair of, ye cauſed quyetlie convoy him to your place of Auchindrane, immediatlie efter the ſaid Murthour; and cauſed your wyfe keip him quyet within the ſam, ſumtymes within the barne and ſumtymes in the turnepyke-heid;² appoynting James Cuninghame, your ſeruand, to cairie his meit to him for the maiſt pairt, and to ly in bed with him; keiping him verie quyet and ſecret from all vtheris. And nevertheles, finding that, pairtlie be his weireing to be keiped as ane cloſe priſoner, and pairtlie be the diſcouerie of ſum of your ſeruandis, who got knouledge of his being in your howſe, that he might be more publictlye diſcouered, and ye thairby tryed³ guiltie of the ſaid Mourthour, ye ſend him to Loch-Ranſay, in Arrane, to the Laird of Skelmurlie,⁴ your freind,⁵ convoyed be your ſeruandis, Johne Mure called *the Barroun*, and James Gordoun, now ſtabler in Edr, and at that tyme your houſhold ſeruand; whare he, being deteaned for

¹ Confirmation. Law Lat. *ratihabere*. ² The top of the *turnpike* or circular ſtaircaſe, common to the towers and reſidences of the principal families in Scotland, at this period. In the courſe of the Trial, it is ſpecified that he was kept 'in *pe chalmers* in *pe turnepyke-heid*.' ³ Found on trial to be guilty. ⁴ Sir Robert Montgomery. ⁵ Blood-relation; one related by the ties of conſanguinity.

your cause, and lang space, and he lykwayes weireing to remayne in ane barbarous cuntrie, amang rude peopill, who nothing reguardit him, being ane strenger to thame, leivand vnder ane counterfute name of *Williame Mure*, as ye had directed him; efter sun discord betuix him and ane of the Laird of Skelmurlies seruandis, he came bak to yow to Auchindrane, whair ye caused keip him darned¹ in the barne and turnepyke-heid *respectiue*, till ye learned that your freind James Mure of Fleit wes going to the Warres in the Low Cuntries; and than ye, be your self and your Lady, perswaded the said James to tak the said Williame to Flanders with him; whilk he consenting to do, your wyfe gaue to the said James ane naig, to help to mak the said Williames expensis; and ye recommended to him the cairefull and saif transport of the said Williame Dalrumpill, and send the said James Gordoun, your seruand, to convoy thame and await vpon thame, to the Place of Cauldwell, in thair way to Leith. Lyke as, the said James Mure of Fleit send the said Williame to Flanderis to the Warris; whair he served dyueris yeires, and ressaued dyueris woundis, and sustained many vther miseries in the same: Whairthrow, he, becumming desyrous to returne to his natiue cuntrie, ye no soner hard of his hame-cumming, bot incontinent thairefter ye send for him to the duelling howse of Walter Mure in Glenheid of Auchindrane; and thairefter, vpon the . . . day of September, or thairby, the yeir of God 1607 yeiris, ye directed the said James Cuninghame, your seruand, to convoy him from the said Howse of Glenheid to *James Bannatyne* house of Chapel-Donald; and casting yow, to forgadder with him be the way,² ye, the said Johne Mure, elder of Auchindrane, and ye the said *James Mure, eldest sone and apperand aire* of the said Johne Mure, elder of Auchindrane, meitting with the said Williame Dalrumpill, in the hieway, betuix Auchindrane and Chapel-Donald, ye keiped cumpanie with him be the space of aucht myles, and held dyuers pourposés, speaches, and conferences with him; tryed of him the estait of the Low Cuntries, and findrie vther materis; till ye, cumming altogether to the house of Chapel-Donald, ye, the saidis Lairdis of Auchindrane, desyred the said *James Bannatyne* to keip the said *Williame Dalrumpill*, whom ye than named 'Williame Montgomerie,' whill he sould vnderstand farther of your pourpose: And sending vpon the morne thairefter, being Setterday the . . . day of September, 1607 yeiris, for the said James Bannatyne, ye, the said Johne Mure, elder of Auchindrane, desyred him to bring to yow, to the Sandis of Girvan, the said Williame, about ten houris at evin; whairin he³ obeying yow, at his cumming with the said Williame, he fand yow, the said Johnne Mure of

¹ Secreted, concealed.

² Contriving that you should, as if by accident, meet with him on the

road. ³ On the margin there is written, 'he simplie lipning (trusting) to traist and freindschip, cam simplie to yow,' but without a mark where it is meant to be taken in. The Dittay in Haddington's MS. Collections seems the original scroll, and bears numerous corrections, in his own hand.

Auchindrane, and James Mure, your eldest laifull fone, attending thame :¹ And at your meitting, ye, the faid James Mure, demanding whair the boy wes ? And the faid James Bannatyne, fchawing to yow whair he had lichted fra behind him,² he pafte fordward to yow, the faid Johne Mure elder of Auchindrane ; wha, fchawing to him that boy wes he wha broght to yow the Letter of aduerteifment of Cullaynes dyet before his Mourthour, and that ye hauing vfed diuers meanes to put him by the way, for efchewing the difcouerie of your pairt and guiltines of the faid Mourthour, he ftill returned within the cuntrie ; whairby ye, feiring that he fould be the meanes of your wraik, ye wes forced to refolue to mak quyte of him : And the faid James Bannatyne, perfuading yow rather to giue him fümwhat and fend him away of new, when, as he had almoft perfuaded yow, and that he and ye wer returning towardis your fone, to move him to allow of the faid refolutioun, fo fone as ye approched neir vnto him, he crewallie invaided the faid Williame Dalrumpill for his flaughter, rufched him to the ground, and, fetting his kneis vpone his armes, he pat his handis in the faid Williames throt, and thairwith worried and flew him : In the whilk fact, ye, the faid Johne Mure, elder of Auchindrane, helped, with your owne handis, to hald him downe and finore³ him. AND incontinent thairefter, ye, the faidis Johne Mure, elder of Auchindrane, and James Mure, your fone, and ye, the faid James Bannatyne, taking ane fpaid and fchule, reddie prepared be the faid James Mure for the pourpoife, caift⁴ hollis in the fand to have buried him ; whilk ftill fchutting and filling with fand and water, fwa that ye wes not abill to get his corps covered, ye, the faidis James Mure, younger of Auchindrane, and James Bannatyne, cairied his deid corps in the Sea, fa far as ye could waid, and left his corps thair, to be cairied to the mayne Sea,⁵ be ane vtterlie wind ;⁶ notwithstanding whair of, within fyve or fax dayes thairefter, the wind and tyde broght bak the dead corps of the faid vmq^{le} Williame, neir to the pairt where ye had mourthoured him : WHILK being tryed,⁷ and the authoris of his Mourthour referched, be all laifull meanes, the constant and vniuerfall bruit⁸ and opinion of the haill peopill of the cuntrie, blamed yow and evrie ane of you of the fam : Lykeas, in treuth and veritie, ye thrie are the verie and onlie Murthouraris and flayeris of the faid vmq^{le} Williame Dalrumpill, vnder your traift, credit, affurance, and power ; in refpect that he wes knowne to you, the faid Johne Mure, elder of Auchindrane, at the tymes and in maner before fpecified ; and wes not onlie knowne to yow, the faid James Mure, younger of Auchindrane, whan he wes ane fcolle in Maybole, and whan he wes keiped in the place of Auchindrane,

¹ Waiting for them. Fr. *attendre*. ² Alighted from horseback, on which Bannatyne and Dalrumpill had 'rode double.'

³ Smother, suffocate. This horrid manner of death is in all respects the same as that lately pursued by the infamous *Burke* and his associates ! ⁴ Cast, dug. ⁵ The Ocean.

⁶ An off-shore wind. ⁷ Examined or investigated by the proper legal authorities. ⁸ Report. Fr. *bruit*.

in anno 1602 yeiris, befoir his going to Arrane, and efter his bak-cumming thairfra to Auchindrane; bot also at his going fra Glenheid to Chapel-donald, whan ye, the saidis Johne Mure of Auchindrane, and James Mure, your eldest sone, convoyed him to the howse of Chapel-Donald, recommended him to the said James Bannatyne, and left him in the keiping of the said James Bannatyne; and, thairefter, fend for him to cum to yow to the Sandis of Girvan; whilk message he obeyed, and most willinglie and reddelie cam to yow; whan he, being vnder your traist, credit, assurance, and power, ye treasonable slew and murdered him, in maner aboue-writtin: AND yow, and evrie ane of yow, ar airt and pairt thairof, and aucht thairfoir be Decerned to forfeit lyfe, landis, and gudes, and to amit all landis, heretageis, takkis, steidingis, rowmes, possessionis, teyndis, cornis, cattel, gudes and geir, titillis, proffitis, commodities, and rightis whatsumever, directlie or indirectlie perteaning to yow, or ather of yow, at the committing of the saidis Murthouris, or senfyne, or to the whilk ye, or any of yow, had richt, clame, or actioun.

IT IS ALLEGET be the pannell, that na proces can be led aganis thame, becaus thai ar nocht summond to this dyett.—My lord Aduocat answers, that thai war summond for thir same crymes of befoir, and being presentit and enterand, wer wairdit,¹ sum of thame in the Castell of Edinburgh, and vtheris in the Tolbuith of Edinburgh; and being accuset for Treasone, may be brocht furth of thair wairdis, and put to ane Assyse. And for verification of the premisses, producet the Letteris of Horning, quhair thay being summond, past to the horne, for nocht finding of caution to compeir and vnderly the law.

The pannell desyres xxiiij houris to be advyset with the Dittay, becaus the matter, substance, persones, and subiect of the first Dittay is alterit.—The Aduocat in the contrair, becaus the Dittay and the first Letteris agreis in substance, tuiching the Murthour of Sir Thomas Kennydie and Willyame Dalrumpill.—The pannell answers, thay differ in circumstances.

The Aduocat thairefter producet the first Summondis, and desyret the famin to be red; and the Justice to advyse, quhidder thay differ fra the Dittay, in substance, or nocht.—THE JUSTICE Ordanis proces, without delay.

The Lairdis of Auchindrane, elder and younger, askit instrumentis, that James Bannatyne is accuset and pannellit with thame, in this proces.—My Lord Aduocat declairis, that he insistis vpon the Summondis, as it is tressonabill.

It is allegit, that this Act of Parliament, quhairvpon the Summondis is foundit, was never *in viridi observantia*, in this Judgement, quhill this persute.²

¹ Imprisoned, kept in ward.

² That the act in question was never observed in the practice of this Court; and that this is the first instance of its having been founded on.

—It is anfuerit, that this Act of Parliament hes tane effect aganis Thomas Kennedy of Drummorchie.

It is allegit, that the affumption of the first pairt of the Dittay, aggreis nocht (with the) woirdis of the Act of Parliament, in thir woirdis, ‘ vnder power, trust, credeit, and affurance ;’ becaus the Laird of Auchindrane had na power over the Tutour of Caffilis : And as to the woird of ‘ affurance,’ it is repoitit in the Summondis, that the feid was taikin away, and thairfoir, na affurance.—To the quhilk it was anfuerit, be the Aduocat, that the allegiances aucht to be Repellit, in respect of the Dittay. For, it is fufficientlie knawin, that foure perfones may haif ‘ power’ over ane ; and the pannell, haifing gevin aduerteifment and directioun to fax to stay the Tutour, thair was mair nor fufficient power : And as to the rest of the allegiance, ‘ credeit, trust, and affurance,’ the Dittay standis relevant, feing thair was na feid standing, and thairfoir, behovet to be flane under trust.

It is allegit, that the Dittay can nocht be relevant, vnles the famyn beir that the pannell was actuall committer of the cryme ; becaus the Act of Parliament beiris, quhair the fact is committit and done be ane man, haifing power and authoritie of the perfone flane ; bot fa it is, that the pannell was nocht present at the committing of the fact ; and fa the perfone flane was nocht vnder his power.—It is anfuerit, that the Dittay standis relevant, in respect that the Pannell was airt and pairt of the fact ; and thairfoir the allegiance aucht to be repellit, in respect of the Dittay.

THE JUSTICE ffindis the Dittay relevant, and Ordanis the famyn to be put to the knowledge of ane Assyse, except the pannell fay forder.

It is forder allegit, that the naikit assertioun of power, authoritie, and affurance, except the pannell had bene present at the committing of the fact, is nocht relevant. *Item*, thair can na proces be led vpone this Dittay, feing the famyn is foundit vpoun ane writ quhilk is nocht producet. Anfueris, aucht to be repellit, in respect of the Dittay.—It is allegit, that the Dittay is nocht relevant to infer Treafoun, becaus it is never fubsumeit in the Dittay, that the Laird of Cullane was vnder the power of Auchindrane. Anfueris, *vt supra*, that the famyn aucht to be repellit, in respect of the Dittay.—It is allegit, that the wryting of ane Letter be Auchindrane to Thomas Kennedy is nocht relevant to infer, that the pannell was airt and pairt of Cullanes flaughter. Anfueris, aucht to be repellit, in respect of the Dittay.—It is allegit, that thair is na thing qualifeit in the Dittay, that the cryme was committit be the pannellis causing, counfall, or command ; becaus counsell can nocht infer airt or pairt. Anfueris, aucht to be repellit, in respect of the Dittay.

THE JUSTICE Repellis the haill former allegiances ; and ffindis proces.

It is allegeit, gif the principal slayeris fallis nocht vnder the danger of the Act of Parliament, the perſones nocht preſent, and yit accuſet of airt and pairt, can nocht fall vnder the danger of the ſaid Act: Bot ſa it is, that the Tutour of Caſſillis was nocht vnder the power or aſſurance of Thomas Kennydie of Drum-murchie, principall ſlayer; and na aſſurance betuix thame, bot feid ſtanding betuix thame. It is anſuerit, that thair was na feid ſtanding betuix Drummvrchie and the Tutour of Caſſillis; and thairfoir the ſaid allegiance aucht to be repellit, in reſpect of the Dittay, as it is ſett down.

THE JUSTICE Repellis the allegiance, in reſpect of the Dittay.

Forder, allegis that the principall actouris is nocht diſcuſſit. Anſuerit, aucht to be repellit, in reſpect of the Dittay beiring airt and pairt; and that the principall committeris ar fugitiue, and thairby hes tane the cryme vpone thame.

It is allegit, concerning *the Slauchter of Dalrumpill*, that the auld Laird re-peitis the haill allegiances maid aganis the Act of Parliament, vnder treſt, cre-deit, power, aſſurance, &c. And for Young Auchindrane, ſayis, that Dalrum-pill was nawayis vnder his power, credeit or aſſurance; becaus it is nocht qua-lifeit, that he was vnder the young Lairdis power; and thairfoir, can nocht in-fer Treafone aganis him. The Aduocat anſueris, aucht to be repellit, in reſpect of the Dittay.

THE JUSTICE, be Interloquoutour, Suſtenis the Dittay, as it is conſauet, alſweill aganis the young Laird as his father.—Quhairvpoun the Aduocat aſkit inſtru-mentis.

ASSISA.

Sir James Scrymgeour of Dudope,	Duncane Bayne of Tulliche,	William Sinclair of Blaſe,
kny ^t , elder, Conſtable of Dundie,	David Weir of Auchiefardill,	George Seatone of North-Rig,
Sir George Elphingſtoun of	Patrik Stewart of Baithe,	Johnne Corbett of Arboill,
Blithifwod, kny ^t ,	Vthreid McDowell of Mondork,	Patrik Carkettill of Markill,
James Scrymgeour, younger of	Robert Merſer of Salene,	Johnne Kneiland of Fofkane,
Dudope,	Mathow Briſbane of Raſlene,	Sir David Woid of Craig, knycht.

My lord Aduocat tuik inſtrumentis of the ſweiring of the Aſſyſe. My lord Aduocat aſkit inſtrumentis of the ſweiring of the Dittay, be Beſſie Dalrumpill, moder to vmq^{le} William Dalrumpill, in that article thairof, concerning the Mur-thouring her ſone.

THAIREFTIR, my lord Aduocat, ffor verificatioun of THE DITTAY to the per-ſones of Aſſyſe, re-peitit to thame the notorietic of the fforfaltour in Parliament of Thomas Kennydie of Drummvrchie, for the treſſonabill Murthour of the Laird of Culzeane; re-peitit the Hoirning vſet aganis the ſaid Thomas, Clon-caird, Thomas M^cAlexander, and remanent thair complices; and the citatioun of the Laird of Auchindrane elder, for the ſaid crymes, in anno 1602; producis the Hoirning vſet be the Laird of Culzeane aganis Auchindrane, ffor the intendit

Murthour of the said Laird of Culzeane, in anno 1597; and repeittis the Laird of Auchindranes Confessioun thairof, in Judgment. And for verificatioun of the said Laird of Auchindrane elder his giltines of the Laird of Culzeanis Murthour, and of the giltines of his sone and James Bannatyne, of the Murthour of William Dalrumpill, producet the Hoirning execute aganis thame for the said cryme, in februar 1608; quhairby, thay ganging to the horne, and fleing frome the Law, thay haif tane vpoun thame the giltines of the saidis crymes.

To prove that *Auchindrane elder ressauit the Letter* sent to him be Mr Robert Mure, contening aduerteisment of Culleanis dyet, and broght to him be Williame Dalrumpile, Walter Mure of Cloncaird being present, producet the Deposition of James Mure of Fleit, markit with the Letter O. *pagina tertia*; the Deposition of James Gordoun, O. p. 5; the Young Laird of Auchindranes awin Declaratioun, O. p. 6. And that M^rAdame carreit aduerteisment from Auchindrane to Thomas of Bargaunie thairof, produceit James Gordones Deposition, markit with the said Letter O. p. 10.

For Auchindranes *knowledge of Cullanes Murthour*, vses the Deposition of the Laird of Cauldwell, markit with the Letter G. p. 1, beirand, that Auchindrane schew to them, that he knew of Cullanes Murthour, befor it wes done, and wald nocht stay it. And vses lykwayis the Deposition of James Mure younger of Auchindrane, his sone, O. p. 6, beirand, that he knew that his father was hevelie suspectit of the Slauchter of the Tutour of Caffillis.

To verifie Auchindrane's *keeping of Williame Dalrumpile in his hous of Auchindrane*, in the chalmer in the turnepyk-heid, and in the barne of Auchindrane, schortlie eftir the Slauchter of the Laird of Cullane; vses the Deposition of Young Auchindrane, E. p. 6, and D. p. 5; the Deposition of Johnne Mure of Woidland, L. p. 6; the Deposition of Johnne Mure, callit Blak-byres, O. p. 1; and of James Gordoun, O. p. 5 et 10.

To verifie Auchindranes *sending of Dalrumpile to Arrane*, quhilk Auchindrane denyes; vses the Deposition of Patrik Dalrumpile, H. p. 5; of Johnne Mure, in Blak-byres, O. p. 1; of James Mure of Fleit, O. p. 4.; off James Gordoun, O. p. 5 et p. 10.

To verifie *Dalrumpillis sending to Flanderis*, be Auchindrane, quhilk Auchindrane denyis; vses the Deposition of Walter Mure in Glenheid, A. p. 2; off Johnne Mure, in Blakbyres, O. p. 1; of James Mure of Fleit, O. p. 2 et 3; of James Gordoun, O. p. 5.—And that the Lady Auchindrane *causit Williame Dalrumpile change his name*, and call him self *Williame Mure*; vses the Deposition of James Mure of Fleit, O. p. 9; and of James Gordoun, O. p. 10.

To preve Williame Dalrumpellis being in Walter Mure of Glenheidis hous, *after his returning frome Flanderis*, to wit, vpone the Thurisday befor his Mur-

thour, quhilk Auchindrane denyis; vſes the Depoſitioun of James Dalrumpill, G. p. 1 et 2; and of Walter Mure, in Glenheid, A. p. 2.

To preve *the bringing of Williame Dalrumpile from Glenheid*, be James Cunynghame, at directioun of the Laird of Auchindrane, quhilk he denyis; vſes the Depoſitioun of Walter Mure, in Glenheid, A. p. 2; and of James Gordoun, O. p. 5.

To preve the Lairdis of Auchindrane, elder and younger, thair *meitting with Williame Dalrumpile*, in the way betuix Auchindrane and Chapel-Donane, and keiping cumpanie and conference with him the ſpace of ſevin or aucht myles, quhill thay thre and James Cunynghame come to Chapel-Donane, quhilk Auchindrane preſſis to deny; vſes Auld Auchindrane's Depoſitioun, E. p. 2; and Young Auchindrane's Depoſitioun, E. p. 7; the Depoſitioun of Andro M^cAllexander, B.; Johnne Mure of Woidland, C.; Patrik Bannatynes Depoſitioun, D. p. 1; Young Auchindrane's Confeſſioun, D. p. 5; James Dalrumples Depoſitioun, G. p. 1 et 2; Williame Roife, L. p. 5; Johnne Mure in Carvell, L. p. 1; James Bannatyne, M. p. 1.

To verifie *the bringing of Williame Dalrumpile*, be James Bannatyne, *to the SANDIS OF GIRVEN*, to the Lairdis of Auchindrane, elder and younger, and MURDERING HIM VNDER nycht, in that place; making ane hole for his burrall, and caſting of him in the ſea; vſes the Depoſitioun of Johnne Mure of Woidland, C.; Patrik Bannatynes, D. p. 1.; James Dalrumpillis, G. p. 1 et 2; David Merſeris Depoſitioun, L. p. 4; Williame Roife, L. p. 5; Johnne Mure in Cairve, L. p. 7; James Bannatyne, M. p. 1 et 2; Johnne Mure in Blak-byres, O. p. 2 et 11; James Gordoun, O. p. 5; James Pennycuiks Depoſitioun, maid 27 of Maij; the Young Laird of Auchindrane's Depoſitioun, F. p. 2, beirand, that he hard be the bruit of the cuntrie, that his father knew of Dalrumples Murthour, becaus he was fugitiue.

To verifie that *Auchindrane's denyall that he knew Williame Dalrumpile*, or that he brocht him M^r Robert Mures Lettir, is vntrew; and that he knew him, and reſſaut the ſaid Letter from him; vſes the Depoſitioun of James Dalrumpile, G. p. 1 et 2; James Mure of Fleit, O. p. 3; James Gordoun, O. p. 5; the Depoſitioun of James Mure, younger of Auchindrane, D. p. 5.

To verifie *James Mure*, younger of Auchindrane, *his knowlege of Williame Dalrumpill*, and of his keiping quyet in Auchindrane; and of his being at hame, immediatlie befor his Murthour; and his father and the deponneris meiting and conference with him in the way betuix Auchindrane and Chapel-Donane, the day befor his Murthour, and thair cuming altogidder to Chapel-Donane that nycht; produceit the Depoſitioun of the ſaid James Mure, younger of Auchindrane, D. p. 5. *Item*, the Depoſitioun of the ſaid Laird of Auchindrane younger, D. p. 7.

To verifie the dilligence, craft, and subtilitie vsfet be the Lairdis of Auchindrane, to suppres and eschew the tryell of Williame Dalrumpillis Murthour, and of thair awin giltines thair of ; first, my Lord Aduocat vses the verificatioun of thair intentioun to Murthour Hew Kennydie of Garriehorne, onlie devysed and attemptit be thame, to cullour thair going to the horne, and to eschew the haynousnes of thair fleing fra the law and tryell of thair giltines, of sic ane horrible and abhominable Murthour as Dalrumpillis; the Depositioun of James Dalrumpile, K. p. 1 et 2; and the Depositioun of James Bannatyne.

Defyres lykwayis the Assyse to haif consideratioun of thair continuall resoirt and friendship with James Bannatyne, eftir the said Murthour; and thair being at the horne for the samyn; thair suffering the reproches and iniuries, be woird and deid, offerit be him to thame, quhilk thay wald nevir haif induret, gif thai had nocht bene affrayit, that, thai discoirding with him, he sould haif discoverit thair giltines of the said Murthour; vses the Depositioun of Patrik Bannatyne, D. p. 3; the Depositioun of Auld Auchindrane, M. p. 3; and of James Mure of Fleit, O. p. 3.

The geving be the young Laird of Auchindrane to James Bannatyne, ane Lyfrent Tak of his rowine of Chapel-Donane, all writtin with Young Auchindrane's awin hand, contening fourtie penneis be yeir of deutie, denyit and menfuorne be Young Auchindrane; and thairefter confessit, quhan the Tak was recoverit and product, E. p. 8.

The deilling of Young Auchindrane, be him selff and his freindis, with James Bannatyne to go to Ireland, and furnessing of him, to that effect, ane boit, meit and drink, quhilk Young Auchindrane denyit; vses for verificatioun thair of, the Depositioun of Allane Pyper, L. p. 3; David Marfchellis Depositioun, N. p. 1, et O. p. 4 et 8; David Mure, in Girven, his Depositioun, O. p. 4; and James Bannatynes, O. p. 8.

That Young Auchindrane wrait ane Letter with the said James Bannatyne, and in his fauour, to Thomas Kennydie of Drummurichie, the Kingis forfalt Tratour; vses for verificatioun thair of, the Confessioun of the said Young Laird of Auchindrain, O. p. 7; and the Depositioun of Williame Kennydie of Garfar, O. p. 8.

To preve that the fermes (*rents*) of Chapel-Donane, was continuallie payit to James Bannatyne, sen his banishment; vses the Depositioun of James Roise, tenant thair, L. p. 5.

To preve the furnessing of pleniffing, money and necessaris be the Auld Lady Auchindrane to James Bannatyne, continuallie, since his going to Ireland; vses the Depositioun of Williame Pyper, L. p. 1; David Marfchell, L. p. 4; Williame Roise, L. p. 5; James Roise, L. p. 5; James Gordoun, O. p. 10; and be Auchindrane's awin Letter sent to James Bannatyne; Moyfes Lokhartis Letter to James

Bannatyne ; Young Auchindranes Letter sent to James Bannatyne ; the Lady Auchindranes thre Letteris to James Bannatyne ; and hir Letter to James Bannatynes wyfe.

The perfewar defyres the Assyse to haif confideratioun, as of ane verrie materiall circumstance, that James Cuninghame, being the man imployit be Auchindrane to keip Williame Dalrumples quyet in the place of Auchindrane, and to convoy him fra Glenheid to Chapel-Donane, the nycht befor his Murthour, quhairby he, being for the tyme, his actuall fervand, and in his hous of Ballachtoule the nycht of Dalrumpillis Murthour, and thairby mair abill to haif discoverit the circumstances of the Murthour nor (*than*) ony vther ; the Laird of Auchindrane hes absentit him, for eschewing of the said tryell : And how the said James Cuninghame, being in the Laird of Caldwellis hous, and the Erle of Abercorne geting knowledge thair of, haifing, as ane Counsalour, commandit Caldwell (*Mure*) to exhibeit Cuninghame befor the Counsell ; he, contrair to his promise, sufferit him to escaip : He being challengeit for it befor the Counsell, grantit the promise, and declairit that Cuninghame was sent to his hous be the Lady Auchindrane ; and that, contrair to his promise, he sufferit him to escaip ; ffeiring, gif he had enterit him befor the Counsell, he sould haif done liarme to his freind. For the quhilk, he become in the Counsellis will ; as his Deposition beiris, II. p. 1.

As lykwayis, how Auchindrane elder directit the said James Cuninghame, by the way to the Laird of Vaynes hous, in Angus, causing him change his name, and to call him self *Williame Broun*, and geving him that name, quhan he recommendit him to the Laird of Vayne, albeit the man was the said James Cuninghame ; Quhilk Auchindrane denyis ; bot the contrair is provin be James Gordoun, O. p. 5 et 10 ; be the Laird of Vayne, O. p. 11 ; Andro Lokhart, O. p. 12, and George Blakis Deposition, maid at Lundoun, 28 Maj.

Forder, it is defyrit that the Assyis will consider the grit substance contenit in the Letter writtin be Auchindrane to his sone, with his awin hand, impudentlie denyit be him ; and nevertheles cleirly verifeit be the Depositionis of David Drummond, seruitour in the Castell, E. p. 15 ; and be Thomas Home, Constable, *ibid.* ; and be the Declaratioun maid be my Lord of Mar, in Counsell ; quhilk the Lordis of Secreit Counsell, present in this Judgment, hes verifeit.

Thay haif to consider the Lady Auchindranes adverteissing of James Bannatyne, be Letters, of all the Dyettis of proces led betuix the Laird of Auchindrane and her sone ; and hir recommending of him to Thomas Kennydie of Drumurchie, hir brother ; provin be Williame Pyper, L. p. 1 ; James Gordoun, O. p. 10 ; and be hir awin Miffaue Letter to James Bannatyne.

The Lady Auchindranes absenting hir self, and nocht compeirance befor the Counsell, quhan scho wes chargit thairto, vnder the pane of Hoirning, to compeir and Depone hir knowledge of the crymes quhair of hir husband and sone ar

accused ; Thomas Mure, sone to Auchindrane, and Andro Sinclair, half brother to Auchindrane, thair going to the horne, for nocht compeirance to depone in the saidis crymes, quhilk of necessitie man be presumeit to proceed of the stay maid to thame be Auchindrane, elder and younger, for feir that thair Depositiones sould discover the guiltines of the saidis Lairdis. The lyk man be presumeit of Thomas Wallace, Johnne M^ccaig, and dyuerse vtheris of the Lairdis servandis, going to the horne, for the lyk cause.

Thay haif also to consider verrie cairfullie, the Laird of Auchindranes hyring James Pennycuik to go to Ireland to Murthour James Bannatyne ; denyit be Auchindrane, and verifeit be the Deposition of the said James Pennycuik, and George Small his servand. And the lyk direction sent be Auld Auchindrane with George Blak to Ireland, to Williame Carmichell younger of Rowntrie-croce ; verifeit be the Depositiones of George Small, O. p. 11, and be the Examinations of the said James Pennycuik and George Blak, in Lundoun, in May last.¹

Last, thay haif to consider the Letter sent be Auld Auchindrane to the Laird of Stair,² and the forme of Band sent thairwith, to haif bene obtenit, subscriuit be the Laird of Stair, and his freindis, of the name of Dalrumpie.

IN respect of the quhilkis premisses, verifeing the crymes lybellit, and haill materiall circumstances thair of, with so cleir evidences and manifest probatioun, as na man could haif expected, in so covered and craftie Murthouris ; quhairby all dout of obscuritie and scruple is cleirly removit ; in caice the said Assyse or ony pairt of thame fall happin so unhappellie to forget thame selfis, as to clange³ the saidis Lairdis of Auchindrane, elder and younger, or the said James Bannatyne, quha hes Confessit his awin guiltines, in Judgement ; my lord Advocat protestis for Wilfull and manifest Errour ; and for all payne that of the Law can follow thairupoun.

IT IS ANSWERIT be the pannell to the perticuleris aboue writtin, that the samyn, nather in haill nor in pairt, aucht to be respectit ; and speciallie, in sa far as the samyn is foundit vpon Deposition of Witnesses ; because, it is speciallie provydit be the Act of Parliament, maid in the yeir of God I^m.V^c. fourscore sevin,⁴ cap. 90, that in all causes Criminall, the haill proces and probatioun, and vther instructiones quhatsoever, ather be Writ or Witneffis, fall be alleget, reffonet and deducet in presens of pairtie accusit, in face of judgment, and na vther wayes ; quhilk is according to the Cowmoun Law ; seing na witnesses can be reffaut *contra non*

¹ It may be stated here, once for all, that unluckily the DEPOSITIONS, LETTERS, and other productions, which are here so regularly quoted by their proper numbers and pages, are lost ; at least, if among the Records of the Justiciary Court, are in a room filled with loose and unarranged papers, tied up in bundles in such a manner, as to render any ordinary search entirely hopeless—as it would occupy many months' constant investigation. ² John Dalrymple, chief of that name. ³ Cleanse ; find innocent, acquit. ⁴ Anno 1587.

citatum ; to the effect that the pairtie may be hard to oppone aganis thame. And trew it is, that all thir Depositiones and writtis, vset be my Lord Aduocat, and speciallie the saidis Depositiones of Witnesse, hes bene ressaunt out of prefens of pairtie ; the pairtie nevir being summonit to obiet aganis thame, done extraiudiciall, and nocht in Judgement : And thairfoir, quhatsoever the Lordis of Counfall, *per medium inquisitionis*, hes done of befoir, out of prefens of pairtie, aucht nawayis now to be respectit be the Assyse ; accoirding to the decisioun of the Act of Parliament : for, as in Ciuile causses, na fayth will be gevin to ony Witnesse out of prefens of partie, *multo minus in Criminalibus*.

And now, answering perticulerlie, first, as to the Forfaltour of Thomas (Kennedy) of Barganie, (Drummurchie,) thair is na thing producet. Nixt, he was nocht forfalt for the factis lybellit, bot only for the burning of the house of Auchinsoule. *Tertio*, it tuiches nocht our cause. As to the Hoirningis, the pannell vses fyve feuerall Relaxatiounes of Auchindrane, elder and younger, *respectiue* ; quhilk thay producet. And albeit the Lairdis of Auchindrane, elder and younger, war put to the horne, for thair nocht compeirance, the first dyet, yet that importis na taking of the cryme upone thame ; becaus, thay being giltie for vther crymes, and speciallie, schuiting of pistolettis, for the quhilk thing mycht haif bene pwneist be the lawis, thay durst nocht compeir, quhill first thay had obtenit ane Remissioun of the saidis crymes, quhilk thay mycht lauchfullie do ; becaus, thay knew certanlie, that thair going to the horne wald be purget be thair compeirance and offer to Tryell. As lykwayis, Young Auchindrane compeirit at the first Dyet ; and also Auchindrane elder wald haif enterit willinglie, and to that effect offerit to comper¹ and tak his Remissioun for the pistolettis, but culd nocht obtene the samyn ; as is notour to my Lord Chancellor and Thesaurer.²—As to the repetitioun of the Deposition of *James Mure of Fleit*, and *James Gordoun*, it is answert, *ut supra*. And forder, in caice the pairtie had bene wairnit, as he was nocht, he wald haif repellit the said James Muir, he being ane vagabund, without ony residence, nocht worth the Kingis vnlaw ;³ and richt sua, that he was denunceit rebell and put to the horne, for steilling of tua horse and thre oxin fra the Tutour of Nuntoun ; and also, for steilling of ane quhyte naig out of the landis of Skeltoun. Lyk as, the Tutour of Bombie, to move him to be ennemie to Auchindrane elder and younger, and to depone aganis thame, he aggreit⁴ the Tutour of Nuntoun and the said James Mure, anent the steilling of the said guidis. And forder, the Laird of Blairquhand hes promiseit him geir and guid deid, to depone aganis thame ;⁵ and (Mure) hes now becum his servand.

¹ Compromise ; make a composition, or purchase his Remission from the Crown.

whom, it will be remembered, were then sitting as Assessors.

² Both of whom, it will be remembered, were then sitting as Assessors. ³ Not being worth, *i. e.* unable to pay the fine or *amercement* to the king, for his own appearance, &c.

and made up their quarrel.

⁴ Reconciled them, ⁵ For the reason of Blairquhand's feud with Auchindrayne, see Hist. of the Kennedyis, p. 19, &c.

And as to Gordoun, can nawayis be respectit, becaus he was nocht aucht zeiris,¹ the tyme of the committing of the factis quhairvpone he was examinat. Lyk as, the pannell defyres that Gordoun may be presentit in presens of the Affyse, and confrontit with the pannell.—Forder, it is allegit be the pannell, that the Depositiones for (of?) the said James Mure and James Gordoun, and all vtheris of the lyk nature, aucht nawayis be respectit; becaus, it is of veritie, that the lybell and Dittay consists of tua pairtis; the ane substantiall, to infer the pwneifchment lybellit, viz. the committing of the factis lybellit; and the advyse, consent, perswasoun, instigatioun, causing, command, counfall, and ratihabitoun, quhilkis ar the only substantiall poyntis contenit in the lybell and Dittay: And the rest of the poyntis of the said Dittay are only presumptiones, coniecturis, and liklienes.² And seing, the speciall cause quhy the Justice Sustenit the lybell, was the advyse, presumptioun, instigatioun, counsell, command, assistance, and ratihabitoun gevin, be the Auld Laird of Auchindrane, to the saidis Thomas Kennydie, for Murthouring of the said Laird of Culzean; and that thair is na thing of the said substantiall poyntis provin be nane of the Depositiones; quhatsoever Depositiones is maid be the saidis tua persones, or ony vther remanent Witnesses, in materis of the lyk nature, anent ony probabilities or presumptiones, albeit thai war maist violent presumptiones, and indoutit, thay can produce na sentence condampnatour³ in Criminall caussis, bot only ar adminicles to the tortour and questioune. And forder, the Depositiones of the saidis tua persones, being only anent the ressalt of ane Letter, nocht contening the contentis and qualitie thair of, can nawayis induce ony presumptioun, far less probatioun. *Item*, it is to be rememberit, that thir Depositiones tuiches nocht Young Auchindrane. *Item*, tuiching that pairt of Young Auchindrane, and Caldwellis Deposition, thay prove nathing, nather of the fact, nor yit of the knowlege. As also Young Auchindrane's Depositiones previs far les; becaus he mycht haif lauchfullie deponit that his father was suspect befor he was pannellit.

And forder, as to the Depositiones of *Young Auchindrane*, and *Johne Mure of Woidland*, thay can work nathing, seing thai preve na pairt of the Dittay, or factis thairin contenit; ffor as to Young Auchindrane's Depositiones, anent his knowlege of Dalrump to haif bene in his fatheris hous, that previs na pairt of the Dittay. And, quhair it might appeir, be the said Deposition, and vtheris Depositiones conforme thairto, that the said Laird of Auchindrane is improvin, as quha deponit that he never knew the said Dalrumpill,—it is answerit, that the same can impoirt na probation of ony pairt of the Dittay; becaus, gifand⁴ and

¹ Eight years old.² Probabilities, *likelihoods*.³ Condemnatory.⁴ Giving or allowing for the sake of argument, but not granting; a common form of expression used in ancient legal proceedings, when Counsel was illustrating a point by arguments, &c.

nocht grantand that the pairtie pannellit had maid ane leising,¹ or vareit and bene inconstant, and sa waverit in his Deposition, the same can impoirt na probatioun; speciallie, quhair the said vntreuth, &c. is nocht in the substantiall pairtis of the Dittay, bot in vther accidentis and externall circumstances. And as to Johnne Mure of Woidlandis Depositiones, it can nawayis be respectit, for thair particular caussis:—first, he is tennent removeable² to the Erle of Cassilis, and his household servand; nixt, he is Chalmerlane and factour to ane grit pairt of his lordschapis landis; bot in speciall, is Bailzie of the Barronie of Dalrumple. *Secundlie*, he was vpone the ground, in companie with the Erle of Cassilis, at the slauchter of Barganie, at quhilk time Auchindrane was deidlie hurt. *Thridlie*, he was also in companie with the Erle of Cassilis, at the persute of Auchindrane, in his awin hous. *Fourtlie*, he was in companie with Hew (Kennedy) of Garriehorne, and his convoy throw the landis of Auchindrane, quhair he come in bragging maner, and socht Auchindrane at his awin hous. *Fyftlie*, befor he was examinat befor the Counsell, the Erle of Cassilis causit him sett down sic woirdis as his lordschip thoelt expedient, and to be subscryuit with his hand; quhilk he nawayis durst alter, befor the Counsell; *et sic prodiit testimonium*. The quhilk writ was producet to him in Counsell, befor he wald depone; quhairby he nicht keip my lordis injunctiones.

ITEM, as to the Deposition of *Johnne Mure of Blakbyres*, it previs na pairt of the Dittay, becaus he deponis nathing of knowlege that he hes of Auchindrane, bot a repoit that he had of vther servandis. And forder, the said Johnne could nevir haif bene witnes fra the beginning, ffor thair caussis:—Becaus, he slew the Laird of Auchindrane's seruand callit Williame Geddies, for the quhilk he was baneischet the countrie; nixt, he come in vpone fair promeissis and conditiounes maid to him be the Erle of Cassilis, to purches to him ane Remission for that Slauchter, and for the quhilk caus, he promeisit to the said Erle to depone quhat he desyret: And last, the said Johnne Mure hes intruset³ him self in ane grit pairt of Auchindrane's lands, and thereby⁴ thinkis to bruik⁵ the samyn.

As to *Patrik Dalrumple's* Depositiones, na fayth can be gevin thairto, becaus he is uncle to the murtherit man.

It is answerit, to the Deposition of *Walter Mure*, and to the rest of the Depositiones befor the allegit Presbiterie, that the saidis Depositiones can mak na faith; becaus thai ar extra-judiciall, na proces depending aganis ony pairtie, na pairtie haifing intres being callit, bot only ane naikit conventioun of tua or thre Ministeris, nocht Presbiteriallie convenit, quha had na power to tak sic Depositiones: And as the saidis Depositiones, gif thai had bene tane to the saidis Mi-

¹ An untruth or falsehood; *leasing*.

² Tenant at will.

³ Intruded; thrust himself into.

⁴ By perjury, or giving false evidence, &c.

⁵ Enjoy; possess as his property.

nifteris in ane Ciuile caus, wald haif maid na faith, far les in ane Criminale. *Secundlie*, the said Walteris Deposition previs na pairt of the Dittay: And albeit the Depositiones war trew and valid, yit thay ar ineffectuall; becaus, albeit it war grantit that Dalrump was send to Flanderis, that impoirtis nocht the probatioun of ony Dittay.

ITEM, it is anfuerit to *James Dalrumples* Deposition, that the same can nawayis work aganis thir perones pannellit: Becaus, in the first pairt of the said Deposition, he deponis nothing aganis thame: And as for the last pairt, beir- ing ane plott to mak ane onfett vpon Garriehorne, the samyn can nawayis work aganis the perones pannellit; nather can his Deposition be regairdit, in respect he deponis his awin turpitude, viz. the forgeing and contriveing of the slauch- ter of Garriehorne devyfit be him self, as is confessit; and quhilk devyse of his, he counsellit the perones pannellit to put in executioun; and sua, he being de- vyser and contriver of the fact, he can nevir be hard to depone in preiudice of the perones pannellit. And to purge the onfet maid vpon Garriehorne be Young Auchindrane, the verritie is, that the caus of that onfet was accidentlie, they meitting togidder at the end of the Toun of Air, and Young Auchindrane meiting him in the way, had just caus to mak the onfet vpon him: first, becaus he had tane his fatheris bluid, and nixt, he was at the Slauchter of his mother- brother.¹ And forder, the said James Dalrumpillis Deposition can nawayis be respectit, becaus he is ferdis of kyn² to Williame Dalrumpill, quha is flane, and is secund and thridis to the Laird of Culzeane. And forder, befor he was pre- sent in Counsell to depone, he was movet to depone the samyn, vncitet,³ be my Lord of Abercorne, quhairof he maid adverteisment thairefter¹ to the Laird of Auchindrane and desyret him to sett him; becaus he had put all that he had, be submissioun, in Sir Claud Hammiltone's handis.

ITEM, as to the Deposition of *M^cAlexander*, it preves na pairt of the Dit- tay nor factis lybellit, bot rather purges the samyn; and forder, can mak na faith, becaus it declairis, that the Lairdis of Auchindrane war content to cum and tuich the corps,⁴ sua that⁵ thay mycht do the samyn in Air, my lord of Cassillis nocht being thair. And to verifie the samyn, produces ane Instrument.⁶ And forder, at that tyme Young Auchindrane was deidlie hurt; and sa could nocht cum. And forder, the said Deposition can nawayis be respectit, becaus it is extra-judiciall, and one in presens of the partie adverfar, viz. the Erle of Cassillis.

¹ Uncle; mother's brother.

² Within the fourth degree of relationship.

³ Without having

received lawful citation.

⁴ Alluding to the well-known popular test, or ordeal, of *calling upon the ac- cused or suspected person to come forward and touch the corpse of the murdered party!* The superstitious notion then held was, that THE CORPSE WOULD BLEED, *immediately on the approach or touch of the Mur- derer!* Powerful use of this circumstance has been made by Dramatists and writers of Romance. See a variety of interesting notices in the APPENDIX to this Trial, with an enquiry into the origin and prac- tice of our ancestors in such cases.

⁵ On condition; provided that, &c.

⁶ A Notarial attestation.

ITEM, as to *Patrik Bannatyne's* Deposition, it aught nawayis to be respectit, for thir cauffis :—*Firft*, becaus he is secund and thridis of kyn with Culzeane, quha is ane pairtie accuser; as also to the Erle of Cassillis: *Nixt*, becaus he is brother to James Bannatyne, quha is *focius criminis*, and is callit and accuset for the samyn cryme: And *last*, his Deposition can mak na fayth, becaus the samyn proceedis onlie *ex auditu*, be relation of his brother James Bannatyne; in the quhilk Deposition, he confesses the said James Bannatyne to be thryse contrair¹ in his relation. And sua, his Deposition, depending vpone ane contrair relation, makis na fayth.—Aganis the haill Depositiones depending vpone *James Bannatynes* relation, it is allegit,—gif James Bannatynes fall, all his relations man fall.

And forder, as to *Williame Roifes* Depositione, it is allegit, that the samyn can nocht be respectit, becaus Williame Roifes wyfe and the Laird of Culzeane ar thrydis and ferdis of kyn. As also, his wyfe is father-sister to James Bannatyne, quha is accuset of the same crymes.—It is allegit aganis the Deposition of *Johnne Mure in Curver*, that the samyn can nawayis be respectit: Becaus the samyn is only ane relation made be James Bannatyne: *Secundo*, becaus the samyn is contrair to the Dittay; in sa far as the Dittay beiris, that James Bannatyne, haifing brocht Dalrump to the Sandis of Girven, left him behind him, and raid forwardis to the tua Lairdis of Auchindrane, quhair the Auld Laird conferring with him, the Young Laird past to the said Dalrump; and eftir ane space, Auld Auchindrane and Bannatyne cuning neir thame, he slew him: And in this Deposition it is confessit, that James Bannatyne sould haif said to the Deponer, that Young Auchindrane drew this Dalrumpill after him, and slew him; quhairby it is euident, that James Bannatyne is contrair, insafar as the Deposition beiris, conforme to the Dittay.

As to the Deposition of *James Bannatyne*, it aucht nawayis to be respectit, for thir argumentis.—*Firft*, becaus he hes tane the cryme vpone him, and for the samyn hes maid offeris baith to the Kirk and pairtie: *Secundlie*, he standis yit at the horne vnrelaxit: As also, is vnder the censure of excommunication; and so is nather Godis man nor the Kingis: *Thridlie*, he is secund and thridis of kyn to the Laird of Cullane and the Erle of Cassillis: *Ferdlie*, he is cum in vpone promise and condition of his lyfe, quhilk was set down to him be Josias Stewart, bruther to my Lord Vchiltrie, James Stewart, and the Laird of Girvenmaynes; and his Band gevin to that effect, that he fall cum baith saif to Scotland and returne saif to Ireland. Eftir meiting and conference in Ireland, and quhat he had sett down the conditiones, he come over to Buit to his coufing the Laird of Cames,² to quhome he schew the conditiones, and brocht Cames brother,

¹ Contradictory.

² From Ireland to the Island of Bute, to his cousin, . . . Bannatyne of Kames.

callit Rannald Bannatyne, with him to the Largis, quhair he mett with James Stewart, quha brocht him to Kilwinning; and than Josias and James Stewartis mett with him befyde Irwing, to haif fett down the conditiones perfytlie, for his sure returning to Ireland, quhilk sould haif bene put in Rannald Bannatynes handis; bot, vpone fair promeffis, he was movet to leve Rannald behind him: And thairefter, he wes brocht to my Lord of Abercorne, with quhome he was tuentie dayis, or thairby: And thairefter, he was send to Cliddisdail, to the Laird of Corhous;¹ and sua, be this progres, it is evident, quhat hes bene the indirect deilling of James Bannatyne, fra the beginning. Speciallie, quhan fouir ane pairtie is accuset for ane cryme, and is fugitive for the same, as in this caise, he can nevir be hard, be his Confessioun and Deposition, to work ony preiudice to ony vther pairtie; nather can his Deposition work, sa mekill as the tortour, to the parties, vules he first be subiect to the tortour him self; as is obseruit in the Justice Courtis of all Christiandome: Nather can his Deposition be regairdit aganis Young Auchindrane, becaus the samyn proceedis vpone malice aganis him; infasar as he was informet that Young Auchindrane had offerit to the Thesaurer, for cleiring of his awin innocencie, to set caution, vnder the pane of Fourtie thowseand pundis, to exhibeit the said James Bannatyne befor the Justice:² And it is nocht to be presumet, that ane man gilty of ane haynous cryme, being at his awin libertie, wald willinglie cum in to his awin deid,³ bot vpone promeffis and conditionis. And forder, this argument is infallable; na gritter fayth can be gevin in this matter to James Bannatyne, nor gif⁴ Dalrumple, vpone his deid-bed, had maid his Declaratioun that he was slane be Auchindrane, elder and younger: Bot trew it is, that na fayth wald haif bene gevin thairto, without vther probatioun. This was cleirly decydit, quhan as Robert Ramsay, notter in Stirling, was execute to the death, confessing that the Instrument of Denunceatioun maid be him self, quhairto he was notter aganis the Tennentis of Halbarnes and Auldlistoun, was fals, and past constantlie to the deid with it; yit, quhan as the caus of Improbatioun was advyset be the Lordis of Counsell,⁵ thay respectit nather his first, secund, nor thrid Deposition, in preiudice of the producer, accoirding to the Cowmoun Law; becaus the Confessioun of ane malefactor may weill preiudge him self, bot na vther.

It is Anfuerit to the remanent Depositiones, depending vpone James Bannatyne's relation—aucht nocht to be respectit, *vt supra*.

As to the Depositiones of *James Pennycuik*, thay aucht to mak na fayth, be-

¹ Bannatyne of Corhous, in the county of Lanark.

² They omit a material part of the offer, viz. to present him 'dead or alive!' It being their purpose to have him murdered in Ireland, *by authority*, and thus for ever to have suppressed evidence of their nefarious wickedness!

³ Death.

⁴ Than if Dalrymple upon his death-bed.

⁵ When the process of Reduction, for the purpose of annulling and setting aside the Instrument, was advised before the Civil Court.

caus he is ane personage infamous and notoriouſſie knawin to be infame ; he is denuncet rebell and put to the horne at the instance of Capitane Williame Rig, for ſteilling of his cloick and his ſuord, accompaneit with ſevin vtheris, betuix Leyth and Ed^r, vnder clud of nycht : And this Hoirning, ſtanding for ane ma-niſeſt Ryote and Oppreſſioun, is ſufficient to mak him infame : And produceit the Hoirning for veryſeing thair of : *Secundlie*, the Depoſitioun of James Pen-nycuik can nocht be regairdit, in reſpect the ſamyn is improvin, in the ſpeciall poynt thair of, befor the Lordis of Secreit Counſell ; in ſa far as he, haifing de-ponit the Obligatioun reſſauit be him from Auchindrane for the ſowme of Four-ſcoir pund, to haif bene gevin for Murthering of the ſaid James Bannatyne—the contrair thair of was verifeit befor the ſaidis Lordis, and the ſaid Obligatioun (proven) to haif bene gevin for borrowit money : Lyk as, the Witneſſes quha war examinat thairupoun, deponit, that thai ſaw the numeratioun¹ of the ſaid money. And ſua the ſaid deponer being improvin, in the maiſt ſubſtantiall poynt of his Depoſitioun, thair aucht no credeit to be gevin to the reſt. Forder, the ſaid Depoſitioun concernis na pairt of the Dittay, nather ſubſtantiall nor circum-ſtances thairin contenit. Laſt, he is *teſtis ſingularis*, deponeing vpone his awin turpitude, viz. that he was hyret to the Slauchter of ane man ; and thairfoir, his Depoſitioun can nocht be regairdit ; ſpeciallie, haifing conſideratioun to the circumſtances thair of, viz. that vncoactit or compellit, he paſt furth of Scotland to London, to mak his Depoſitioun to his awin guid-brother,² Sir James Ham-miltoun, in the quhilk he confeſſis him ſelf to be reſtranit fra his allegit pre-tences, and to mak the ſaid Depoſitioun for the love and reverence he bure to my Lord of Abercorne, quhome the perſones pannellit acknowledges³ as pairtie. Quhilkis haill circumſtances, concurrand with the notorietye of his bypaſt lyfe, vereifeit be the Decreit of Secreit Counſall, his Depoſitioun can mak na fayth.

As for the Depoſitiones of *George Blak*, the ſamyn can mak na fayth : becaus he depones that the Laird of Auchindrane ſould haif hyret ane Williame Car-michell, being ane diſcreit Gentilman, *integre fame*, is nevir examinat thair-upoun ; and ſua the ſaid Georges aſſertioun, being *teſtis ſingularis* in that Depoſitioun, can nocht worke.

To the preſumptioun obiectit aganis *Young Auchindrane*, beiring, that gif he had nocht bene giltye of the Murthour of Dalrump, he wald nocht haif ſufferit the iniurious woirdis and langage of James Bannatyne ; it is anſuerit, that gifand the preſumptioun war trew, yit it is nawayis pregnant to infer Treafone aganis Young Auchindrane, ſeing na ſubſtanciall fact is provin. And forder, the caus of his forbeiring of him, at that tyme, was, in reſpect the ſaid James Bannatyne vtterit his iniurious woirdis and boiſting, in his drukinnes,

¹ Telling, or counting out of the money.

² Brother-in-law.

³ Recognise.

quhairvnto he is alwayis subiect. As lykwayis, it was na honour¹ to Young Auchindrane to put handis in his awin man, being in that estait : Lykas, he was reconfeillit with him, at the requeist of Williame Kennydie of Garfar, quha was examinat befor the Counsell.—It is anfuert, to the presumption concerning the Tak² maid be Young Auchindrane to James Bannatyne, quhilk Young Auchindrane denyit that he nevir gaif any to the said James, quhill³ the samyn was provin and producet, &c.; that the samyn presumption is nawayis sufficient to infer the cryme of Treasoun; becaus the same is nocht ane presumption concerning the committing of the cryme lybellit, bot only ane illatioun⁴ vpoun ane vnnecessar consequence; ffor it nawayis followis that, albeit ony Gentilman gaif ane Tak, for nocht, to ony of his servandis or dependeris, that thairfoir he was airt and pairt with him in committing of ane tressonabill act; vnles it war sufficientlie verifeit to haif bene done for that caus; nor yit dois the production of the Tak mak Young Auchindrane's Deposition to be vutrew; becaus it is nevir provin that the Tak was gevin to James Bannatyne; bot, be the contrair, the samyn was tane out of Thomas M^cAllexanderis kist, in quhais handis it was confignit, quhill the conditiones betuix thame war endit; viz. that the said James sould haif maid richt to Young Auchindrane of the sowe of 1^m (1000) merkis, quhilk he had vpone Langschawis land, quhilk he could nocht than presentlie do, in respect the said James had maid his awin wyffe assignay thairto; quhilk Assignatioun is producet in judgement: Nather is it probable that gif the Tak had bene maid to the said James, conforme to the presumption, bot the samyn wald haif bene put in his awin hand, and nocht confignit in ane thrid persones hand.

[My Lord Aduocat takis instrumentis of James Bannatynes Declaratioun maid judicially be him; quha being demandit, ‘Gif the Tak grantit to him be Young Auchindrane was delyuerit to him self?’ Declarit, it was first delyuerit to him, and thairefter, be consent of him self and Young Auchindrane, it was put in the handis of Thomas M^cAllexander, vpone Auchindrane's feir that the deponent had allegit the production of that Tak sould haif done him grit harme.]

As to the Deposition of *Allane Pyper*, it aucht nocht to be respectit, becaus he is tennant to my Lord of Cassillis of the foure merk land of Sallachan; and forder, the said Deposition proves nathing, nather of the substance nor circumstances of the Dittay. As to the Deposition of *Williame Roise*, can mak na fayth; becaus his wyfe and the Laird of Cullane are thridis and ferdis of kyn: And forder, the payment of the maill and deutie inferris na presumption. As to the Deposition of *Williame Pyper*, auent the Lady Auchindrane's furneissing of James Bannatyne, aucht nocht to be respectit, becaus he is man, tennent, and

¹ It would have been dishonourable.² Lease, or *tack*.³ Until.⁴ Inference. Lat. *illatio*.

servand to the Erle of Cassillis ; as also, is tennent removeable to the Erle of the foure merk land of Sallachan ; nixt, he fauld his maister Ardmillane and Thomas of Bargany to my Lord of Cassillis ; for the quhilk he promeist him V^c merkis. It is answert to the presumptioun anent *the Laird of Cauldwallis* Deposition, of the suffering James Cunninghame to pas away, contrair to his promes, that the samyn is nawayis pregnant aganis the persones pannellit, seing thair is na fact or deid contenit in the same, allegit to be done be thame. It is answert, to the presumptioun resulting vpone the Letter producet—First, the same wirkis nathing aganis Young Auchindrane, becaus it is ane Lettir allegit writtin fra his father to him, never ressaunt be him ; and sa can infer na preiudice aganis him : *Item*, it can work nathing aganis the father, becaus the samyn is nocht subscryuit be him ; lyk as, he denyis the samyn being re-sent ; and thairfoir, he nocht confessing the samyn, nor being subscryuit be him, can work nathing aganis him : And quhair as, it wald appeir the same to haif bene delyuerit to the Counsell be my Lord of Mar, quha is allegit to haif ressaunt the samyn fra the Constable,¹ quhilk Constable is allegit to haif ressaunt the same fra Dormond, ane of the ordineris of the Castell ; and the said Dormond is allegit to haif ressaunt the samyn fra Auchindrane elder, to haif bene delyuerit to his sone : The samyn can mak na fayth, ffor albeit my Lord of Mar and the Constable thair Depositions may be trew, as the persones on pannell will nocht impunge the samyn, yit it followis nocht bot that Dormond hes bene subornet be the vnfreindis of the saidis persones to mak the said narratioun to the Constable : to the effect that thairby he mycht caus ane falsfeit Letter cum in the Counsellis handis :—And to mak the said mater mair cleir, the said Laird of Auchindrane elder offeris to preve and verifie instantlie, be dyuerse famous witneffis subscryveand, and, in speciall, be James Pennycuik, ane of the persones producet aganis him, and vtheris, &c., that Eduard Mekiljohnne, sumtyme seruitour to James Prymrois,² come to the Laird of Auchindrane, thay being baith wairdit in the Tolbuthe, and said to him, ‘ Sir, I haif sene your writ of befoir ;’ and being demandit, ‘ Quhair ?’ answerit, ‘ I was imployit to counterfute ane Letter of youris, allegit directit be you to be Castell of Ed’ to your sone,³ the quhilk contenit ane half-throche of paper⁴ on bayth be sydis, and was nocht subscryued ; the quhilk I counterfute as neir your hand writt as I think was possible.’ Being demandit, ‘ How was it be his writt quhilk I am now wryting ?’ Answerit, ‘ It was sumthing smaller.’ Being demandit, ‘ Quhat was be caus be Letter was nocht subscryuit ?’ Answerit, ‘ It was to mak the matter mair suspicious !’ ffor, sayis he, ‘ it wes gevin me vpone

¹ The Constable of Edinburgh Castle, viz. Thomas Hume.

² Clerk to the Privy Council.

³ Directed from Old Auchindrane, then in the Tolbooth of Edinburgh, to his son, then in ward in the Castle.

⁴ A half *through*, or half a sheet of writing-paper, then usually of the size which is now termed ‘ foolscap.’

ane grit secreit in the Tolbuthe, and I nevir reveillit nor opnit þe matter quhill now ! James Pennycuik speiris at him, ‘ Quha gaif 3ow this ? ’ Anfuert, ‘ I will keip þat to my felf ! ’

As for the doings of *the Lady Auchindrane*, the famin can nawayis preiudge hir hufband or hir sone, fcho being ane woman ; and hir abfenting of hir felff was for ane lauchfull caufe, viz. feiknes, authorizet be ane lauchfull Testimoniall.

As for *Thomas Mure* and the reft going to the horne, for non compeirance, it can be no pregnant prefumptioun to infer Treafone vpone the perfones pannellit.

Eduard Mekill-Johnne, being fend for, and prefenting him felff, fuorne and examinat, deponis, that he reffaut the Letter direct be Auld Auchindrane to his sone, being wairdit in the Caftell of Ed^r, ffra my Lord of Mar, in prefens of Archibald Prymrois, writter, to be coppeit be the Deponer. Eftir the coppieing quhairof, the deponer, ane grit fpace thaireftir, cuming to the Tolbuith of Ed^r, and finding the Laird of Auchindrane wryting at ane buird, he come to him and faid as followis : ‘ Laird of Auchindrane, I think I haif fene 3our writ ofbefoir.’ Qubairvnto Auchindrane anfuert, ‘ Qubair faw 3e it ? ’ The Deponer replyt, ‘ I remember I coppeit ane Letter verrie lyk 3our writ, quhilk I reffaut to coppie fra ane Noble man ! ’ Bot wald nocht declair to him the Noble man his name that gaif the directioun : And as to the alleget declaratioun than maid be the deponer, that he counterfute the faid hand writt, denyis the famyn ; bot that the famyn was coppeit be him, be directioun, as faid is. Qubairvpone my lord Aduocat askit instrumentis.

Archibald Prymrois, alfo prefent, being fworne, Declairis, that he was prefent quhan my Lord of Mar delyuerit the Letter to Eduard Mekil-Johnne to be coppeit ; quhilk my Lord than declarit, was interceptit betuix Auld Auchindrane and his sone ; and the famyn Letter being than prefentit be my lord to the Deponer, he verrie hardlie could get the famyn red, being fa evill writtin and evill fpellit ; Bot to put Auchindrane in remembrance anent that matter, the famyn Letter being producet to the Lordis of Secreit Counfell, eftir intercepting thair-of, and fchawn to the Laird of Auchindrane, and he than inquyrit, ‘ Gif he knew that Letter or the hand writ thair-of ? ’ Auchindrane anfuert, ‘ It was nocht his hand-writ, bot was verrie lyk it.’ And being defyret to reid the Letter, he red the famyn in thair Lordfchipis prefens, verrie distinctlie, without ony ftope : At quhilk tyme, the Lordis of Secreit Counfell, my Lord of Dumbar being prefent, caufit Auchindrane wryte with his awin hand ane particuler anfuert of all that was demandit him in that matter, to the end thai mycht the better recognofce and try quhiddir the famin was writtin be him or nocht : And forder, the deponer knawis nocht.—Qubairvpoun my Lord Aduocat alfe askit Instrumentis.

IN fortificatioun of THE VERIFICATIONIS producet be the Aduocat, and vset

to the Assyse, my lord Advocat affirmes, that it is lauchfull and vsuale to the Lordis of his Maiesteis Secreit Counsell to examine Witnesfes, out of presens of pairtie, in all crymes tressonable ; quhais Depositiones being producet to the Assyse, makis full faith, vnles thai be impugnet be sum lauchfull particular exception proponit aganis the samyn ; and can nocht be impugnet, for want of power in the examinaturis ; or the Depositiones was ressauit, the pannell nocht being callit thairto.—The Depositiones of *James Pennycuik* and *George Blak*, tane at Court, ar lauchfull, as tane by expres command of the Kingis Maiestie, and in presens of ane of the Lordis of his Counsell of this Kingdome.—It is absurd to excuse the pannellis going to the horne, for the tressonabill cryme lybellit, for feir, gif he had compeirit, to haif bene challanged for pistolettis ; seing, his being fugitiue for this cryme, inferris aganis him presumption of Treasoun : And in caice he had compeirit, his schuitting of pistolettis without ony harme done with thame, wald haif inferrit na forder danger, nor (*than*) the panes of ane fyne.—The persewar neidis nocht to produce *Thomas Kennydeis sforfaltour* for this cryme, becaus the samyn being deducet in Parliament, is judget nottour to all the subiectis, and na man can pretend ignorance thairto.—The Relaxationes producet, purges nocht the presumption of thair guiltines of the crymes contenit in the Hoirningis ; becaus, Auchindrane elder was nocht relaxit fra the hoirning, for lying (in wait) for Collayne in Mayboill, quhill efter his reconciliatioun with the pairtie ; at the quhilk tyme, na man was to persew him : Nather was he relaxt fra the horne for the tressonable crymes lybellit, quhill he was tane and imprisonet in the Tolbuith of Edinburgh, and sa could nocht eschew his tryall.—To the obiection aganis *James Mure of Pleit*, it is vntrew and malicious : And he being confrontit with the Deponer, Auchindrane proponit na objection aganis him, that tuichet ather his fame or welth.—Attour, the persewar takis instrumentis, that *the Erle of Cassillis*, being suorne, in presens of the Assyse, vpoun the obiection offerit to be verifeit be his aith, hes declairit the samyn to be vntrew. And lykwayis, that *Sir Williame McClellane of Auchleane, kny'*, being suorne vpone the poynt of Thift, and reconciliatioun thairto, offerit to be provin be his aithe, he declairit the samyn to be vntrew : And forder, he declairit, befor the Assyse, that gif ony imputatioun could be laid to James Mure for the suspitioun of that Thift, the samyn was cheslie to be imput to Auld Auchindrane, quha houndit him out to the doing thairto.—To the obiection aganis *James Gordoun*, for his youthe, the tyme of the factis quhairvpone he hes deponit, answeris that he was past ten yeir auld, befor the committing of the first of the saidis factis ; And being now ane man of perfyte age, may lauchfullie depone of thingis done quhan he was young, the samyn being recent in his memorie.—Attour, the said James, being confrontit with the Laird of Auchindrane, he than deponit

nathing aganis his perfone, age, nor lauchfulnes of his Depositionne.—To the generall objectioun, that the Depositiones in Criminall caussis makis na probatioun, bot ar presumptionis and caussis of tortour, it is manifestlie vntrew, and contrair to the Law and practiques of this cuntrie.—To the objectioun, that the Depositiones concerning *Mr Robert Mures* Letter ar generall, and preves nathing, it is vntrew ; becaus the Depositiones contenis, that the Letter buir aduerteifment to Auchindrane of the Laird of Culaynes dyet to Edinburgh.—For the Depositiones maid be *Cauldwell* and *Young Auchindrane*, referris the confideratioun of thame to the Assyse, it being out of dout, that nather Young Auchindrane wald hurt his father, nor Caldwell his freind, be thair Deposition.—The objectiones aganis *Woodland* ar proponit in jeast ; becaus at all tymes quhan he cumis to the toun, he viffeitis the Defenderis, his freindis,¹ in ane freindlie maner.—For *Johne Mure*, callit of *Blakbyres*, he was Auld Auchindrane's houshold fervand, sa lang as he had ane hous, and senfyne hes duelt in Blakbyres, vpone Auchindrane's land, familiar with his Lady and him self, frie of all perfute, convictioun, hoirning, or suspitioun of cryme. And the perfewar takis instrumentis of the *Erle of Cassillis* Declairatioun to the Assyse, that his lordschip nevir maid promeis to Blakbyres, to purches² to him Respett, Remission, or vther fauour, for his compeirance.—The *Depositionis* maid to the *Presbiterie*, ar verrie lauchfull and formell ; haifing the force of ane Inquisition, for tryell of ane murthourit man and the authoris thairof.³—*Walter Mure* was tenent and fervand to the pannell, and convoyit by the way⁴ by his meanis, becaus he mycht haif controllit his denyall of his sending James Cuninghame to the said Walter Mures hous for Williame Dalrump.—*James Dalrump* his Deposition is lauchfull, albeit thai allege it to be maid to his awin turpitude, and that, be his awin confessioun, he is *socius criminis* ; becaus in abhominable and extraordinar crymes, sic as Murthour vpone set purpois, complices ar lauchfull Witnessis, and thair Depositionis makis full faith ; becaus it is confiderit be the Law-makeris, that sic secreit and denyable crymes, can nocht possiblie be provin, bot be complices. James Dalrumpillis kynreid with Cullayne and the Erle of Cassillis, can nocht mak him suspect, becaus he is sister-son⁵ to the Lady Auchindrane, and sister-bairnis⁶ with Young Auchindrane, and sa presumet of the Law to beir gritter affectioun to thame.

The perfewar desyres the Assyse to remember Auld Auchindrane's Declariatioun, in thair presens, that James Dalrumpill maid him adverteifment to set

¹ In this instance, and indeed generally throughout this Trial, the term '*freind*' signifies relative or blood-relation, as in the preceding reference to Caldwell, &c. ² Procure. ³ An inquest or

precognition held for the purpose of discovering the perpetrators of a murder ; and for bringing them to justice for their crimes, if guilty. ⁴ Put out of the way. ⁵ Nephew. ⁶ Cousin-german.

him,¹ quhilk detectis his fauour to the defenderis, and his vnwillingnes to depone to thair prejudice.

Patrik Bannatynes Deposition man mak fayth, becaus it was maid quhan he was the Kingis lauchfull subiect, frie of all cryme; and his kindreid with the Erle of Cassillis, can nocht mak him suspect; becaus, sen the feid,² he hes bene in speciall freindschip and familiaritie with the Defenderis; quhilk thai can nocht deny: Nather can the said Patrikes Deposition, nor the Deposition of ony of the remanent Witneffis, be impungeit, as foundit only *super auditu*, and be relation of James Bannatyne; becaus that relation was maid be James, quhan he was in verrie grit freindschip with the Lairdis of Auchindrane, elder and younger, and ressauit many fauoris and suppoirtis fra thame.—The Defenderis impungis *Johnne Mure in Curveris* Deposition anent the pulleing of Williame Dalrumpill af James Bannatynes hors; bot never answers to the materiall poyntis thair of, anent thair sending of Cuninghame for Dalrumpile to Glenheid; convoying of him to Chapeldonan; sending for him to Girven Sandis; and Murthouring of him thair.—*James Bannatynes* Deposition man mak full fayth, albeit he be at the horne, and excommunicat for this cryme; but hoirning and excommunicatioun can nocht work famekill aganis him as his awin Confessioun; quhilk Confessioun can nocht stay him to be Witnes, seing he is so necessar a Witnes, as without him na probatioun can be had in this caus, bot be his Deposition; except, be the Confessioun of the remanent defenderis, quhair of thair is no hoip, in respect of thair effronterie, obstinacie, and induratioun. His kinreid with the Erle of Cassillis and Cullzeane is proponit in scorne; becaus the Lairdis of Auchindrane can nocht deny, bot that the said James was professit pairt-taker with thame, in all feidis and querrellis aganis the Erle of Cassillis, and assistit thame in the Invasioun of Garriehorne for his Slauchter. Thair allegiance, that he comes in vpoun promeis and conditioun of his lyfe, is absurdlie qualifeit, as grantit be thame quhois protectioun and saif conduct can (nocht) saif ane hair of his heid. Thair allegiance of his malice aganis Young Auchindrane is impertinent, in respect of Young Auchindrane furneissing and sending of him out of the countrie, and recommending of him, be his Lettres, to his uncle; and of the fauour and help maid to the said James Bannatyne senfyne, be the Lady and the pannellis remanent freindis. Quhair thay propone, that he wald nocht haif willinglie cum in to his awin deid; it is saiffer for him to cum in and depend vpone Godis fauour and the Kingis mercie, or failseing thair of to die, weill preparit in ane Christiane resolutioun, vpone the scaffold, nor³ to haif bene in hourlie danger to haif bene murthourit, be procurement of the Defenderis, as he mycht haif bene in danger—nocht haifing lafour to haif callit for Godis mercie.

¹ To cite him as a witness.

² Feud.

³ Rather than.

Robert Ramsay's practise is impertinentlie citet in this caice; becaus he deit for his manifest periurie, and false and contrair Depositiones, justlie working aganis him selff; quhilk maid nocht the evident¹ to fall, and sa verifeit na punisheable falsit aganis ony vther. Bot heir, thair is ane actuall Murthour, quhair of the Lairdis of Auchindrane ar provin als giltie as James Bannatyne.—The perswar takis instrumentis that *James Pennycuik*, being solempnelie suorne befor the Assyse, hes ratifeit, in thair prefens, his hail Depositiones maid in Ingland. His Hoirning makis him nocht infamous, becaus it proceidis vpon ane Decreit of Secreit Counsell, quhilk can nocht be gevin in ane mater impoirting infamie; besyde, that sen² the said Hoirning, he remanit prissoner dyuerse oulkis in the Tolbuith of Edinburgh, quhair ony man that lyket to haif accuset him mycht haif drawin him to pannel, in despyte of his heart.—The Deposition of *Mr Johnne Edmestoun* aganis him can nocht be respectit; becaus Mr Johnne is infamous, being deprehendit and tryit authour of ane infamous lybill aganis the Lordis of Secreit Counsell, Sessioun, Prelattis of this Kingdome, and Magistrates of this Burgh.—Quhair thay allege that James Pennycuikis Deposition concernis nocht this Dittay, the perswar declairis, that he vses his Deposition as ane probatioun of ane consequent fact, quhilk cleiris exceidinglie the preceiding Murthour of Dalrumple: ffor Auld Auchindrane wald nevir haif hyret ane man to haif murthoret James Bannatyne, gif James Bannatyne had nocht bene able to haif verifeit aganis Auchindrane ane mair dangerous cryme. He is nocht meirlie *testis singularis*, becaus his Deposition is strenthened by the Deposition of his fervand *George Small*; and his Deposition vpon his allegit turpitude can nocht repell him in this caice; becaus he is, in effect, ane complice with thame aganis quhome he deponis, and hes purget his giltines thair of, be his tymous repentance, and desisting frome the prosecution of the said purpos. His Deposition can nocht be elydit³ be ony thing writtin to him be Sir James Hamiltoun; becaus that Deposition is maid judiciall, alsweill be his Declaratioun, befor the Lordis of his hienes Secreit Counsell, in Ingland, and be his approbatioun of his hail Depositiones, this nycht, in prefens of the Assyse. *George Blakis* Deposition is verrie famous,⁴ and can nocht be drawin in suspicioun, vpoun the allegiance of ony malice consauet for want of fourtie merkis of fie.—*Young Auchindrane's* suffering of the iniureis offerit to him be James Bannatyne, standis cleirly verifeit be the reiterat Depositiones of *William Kennedy of Garfur*, he being confrontit with Young Auchindrane.—*Auld Auchindrane's* denyall of his Letter to his sone, can nocht be respectit, seing it is so cleirly verifeit to the Counsell, be Dauid Dormond, and Thomas Home, Constable of the

¹ The writing or Title-deed referred to in his case.
elidere.

⁴ Worthy of credit.

² Since.

³ Evaded; got quit of. Lat.

Castle, and the Erle of Mar, quho ar Witnessees aboue all exceptioun, that the samyn was send be Auld Auchindrane to his sone.—The perfewar repeitis the Depositiones maid be *Archibald Prymrois* and *Eduard Mekill-Johnne*, in judgement; and namelie, that pairt, quhairby Archibald Prymrois callis my Lordis of Counsell treulie to memorie, that Auld Auchindrane, at the verrie first sight of his Letter, red the samyn so ryplie and perfytlie, as gif he had it perquier,¹ quhilk no vthier man, nor² the wryter of the Letter, was able to haif done. Repeitis lykwayis the said Eduard Mekill-Johnnes Deposition, quhairby the treuth of his copping of Auchindranes Letter to his sone, at the desyre of ane most honourabill and famous Noble-man, detectis the knaverie and complate of ane socieatie of malefactoris and dyverse.³

Finallie, the perfewar repeitis the just suspitioun consauet vpon the pannellis absenting of his wyfe, sone, and brother.

THE DEFENDERIS allegis, that the Young Laird of Auchindrane is frie of the presumptioun of the Hoirning, becaus he compeirit at the day.—Auld Auchindrane is nocht pannellit for lying at wait aganis the Tutour of Cassillis, at Maybole; and sua, na presumptioun can arryse vpon that Hoirning. As for the rest, thay ar purget be compeirance.—As for that pairt anent *James Gordoun*, he being confrontit with Auchindrane, he opponit nothing at that tyme, ather concerning his youthe or vtherwayis; ansueris, that was nocht the place convenient; bot now, *debito tempore*, in this Judgment, he proponis the samyn, conforme to the Act of Parliament; and all vtheris of the lyk nature.—It is ansuerit to that article, ‘that Depositiones ar manifest probationes,’ that the Depositiones vpon conjectouris and presumptiounis of na Law nor practique, ar manifest probatione, bot only sufficient to induce tortour: And trew it is, that all the Depositiones lybellit ar vpon conjectouris.—*Walter Mure*, eftir that Auchindrane younger was twyfe enterit, and Auld Auchindrane lang in the Tolbuthe, was duelling actuallie in his awin hous, tane and apprehendit be the Erle of Cassillis, and demittit be his lordship; and sa, his absenting him self can nocht be presumet for this cause.—The malice of *James Bannatyne* towardis Young Auchindrane is cleir, becaus he will preve, be James Gordoun, ane of the witnessees producet aganis him, that James avowit to haif Young Auchindranes lyfe, becaus he offerit to the Counsell to inbring him vnder the pane of Fourtie thousand pundis.—The Depositione of *Mr Johnne Edmestoun* is nocht vsæt as ane sufficient probatioun; but his Deposition, with the vther Deponer with him, aganis quhome thair is na suspitioun, is mair pregnant to tak away James Pennykuikis Deposition, than James Pennykuikis Depositione is to infer Treasone:

¹ By heart; by rote. Fr. *par cœur*. ² Excepting; but. ³ Detects the knavery and plot (conspiracy) of a society, or association, of malefactors and bankrupts (*dyvouris*)

As *James Pennycuik* is at the horne, sa *George Small*, his seruand, is at the horne, for the same fact; and *George Small* deponis naething in speciall.—Last, the persones on pannell defyres your honouris of the Assyse to haif confideratioun of the lybell and Dittay; as the samyn was admittit be my Lord Justice, viz. that the speciall poynt making the samyn relevant, was, that *Thomas Kennydie* of Culzeane was flane be the advyse, instigatioun, causeing, command, counsell, and ratihabitoun of Auchindrane elder, quhilk is the first pairt of the Dittay; quhairin, thair is naething provin aganis Auchindrane elder, of those substanciall poyntis; nather can the samyn be ony wayes imputtit to Auchindrane younger. And as for the secund pairt, quhilk is lybellit conjunctlie aganis Auchindrane elder and younger, and *James Bannatyne*; the substanciall pairt quhairof is the allegit committing of the Slauchter of vmq^{le} (*Williame*) Dalrumpill: And the rest of the haill lybell, ar only accidentis, conjectouris, and presumptiones; and seing na pairt of the substanciall poyntis is provin, albeit the haill actiones, presumptiones, and conjectouris war provin, quhilk is nocht grantit; off all law and equitie, obseruit in all cuntreyis, the maist that can be inferrit thairupoune, is the tortour of the persones aganis quhome the presumptiones ar militant; quhilk specialle man haif place in the persone of Young Auchindrane, aganis quhome few or nane of the presumptiones ather contenit in the Dittay, or proponit by¹ the samyn, dois militat.

VERDICT OF THE ASSISE. Quhilkis persones of Assyse, eftir accusatioun of the saidis persones on pannell, be Dittay, of the Treffonabill and crewall Slauchteris and Murthouris *respectiue*, aboue specifeit, and fuering that article thairof, anent the Murthour of the said *Williame Dalrumpile*, be the said *Bessie Dalrumpile*, his mother; and eftir production of the haill Depositiones aboue writtin, and vther writtis and probatioun for cleiring of the Pannellis giltines of the saidis crymes, be our said fouerane lordis Aduocat; the saidis persones of Assyse remouet altogidder furth of Courte, to the Counsal-hous of the said *Tolbuthe*; quhair thai, be pluralitie of voitis, electit and choiset the said *Sir James Scrymgeour* of Dudope, kny^t, chancellor; *Reffonet* and voitit vpone the crymes contenit in the said Dittay, and haill circumstances thairof; and being ryplie and at lenth advyfet thairwith, togidder with the haill writtis and probatioun vset and producet be our fouerane lordis Aduocat, for instructing thairof; togidder with the Pannellis objectiones proponit be thame, and thair preloquitours aganis the samyn, with my Lord Aduocattis ansueris maid thairto; thay reenterit agane in Court, quhair the saidis persones of Assyse, be the mouth of the said *Sir James Scrymgeour* of Dudope, kyn^t, thair chancellor, Pronuncet and gaif furth thair determinatioun vnder writtin, subseryuit be the said chancelloris hand, quhairof the tennour followis.

¹ Independent of; besides; *forby*.

“ The Affyse, for the maist pairt, efter reffoning and voiting vpon the first article of the said Dittay, find JOHNNE MURE ELDER OF AUCHINDRANE to be Giltie, culpable, and convict of airt and pairt of the tressonable and crewal Murthour of vmq^{le} Sir Thomas Kemydie of Culzeane, kny^t, committit in forme and maner contenit in the first pairt of the Dittay. AND siclyk, the saidis perfonas of Affyse, for the maist pairt, findis and declairis the said Johnne Mure elder of Auchindrane, and JAMES MURE OF AUCHINDRANE YOUNGER, and ather of thame, to be Giltie, culpable and convict of airt and pairt of the tressonable and crewal Murthour of vmq^{le} Williame Dalruple, in maner specifit in the Dittay.—AND last, thai all, in ane voce, findis and declairis the said JAMES BANNATYNE, callit of Chapel-Donane, to be Giltie, culpable, and convict of airt and pairt of the said tressonabill Murthour of the said vmq^{le} Williame Dalruple, committit be the saidis perfonas, in maner contenit in the Dittay.”

SENTENCE. Efter the pronunceing and declairing of the quhilk determination and delyuerance of the saidis perfonas of Affyse, “ THE JUSTICE, in respect thair of, be the mouth of Alexander Kemydie, dempster of Court, decernit and adiudget the saidis Johnne Mure of Auchindrane elder, James Mure of Auchindrane younger, his eldest sone and appeirand air, and James Bannatyne, callit of Chapel-Donane, and ilk ane of thame, to be tane to the mercat croce of the burcht of Edinburgh, and thair, upone ane scaffold, thair heidis to be strukin frome thair bodeyis: And all thair landis, heritages, takis, stedingis, rowmes, possessiones, teyndis, coirnes, cattell, insicht pleniffing, guidis, geir, tyillis, profiteis, commoditeis, and richtis quhatsumeuir, directlie or indirectlie pertening to thame or ony of thame, at the committing of the saidis tressonabill Murthouris, or senfyne; or to the quhilkis thay, or ony of thame, had richt, claim, or action, to be forfait, escheit, and inbrocht to our souerane lordis vse; as culpable and convict of the saidis tressonabill crymes.”

Quhilk was pronuncet for DOME.

APPENDIX OF PAPERS AND DOCUMENTS ILLUSTRATIVE OF THE TRIAL OF THE MURES OF AUCHINDRAYNE.

I. LETTER *by Sir Thomas Hamilton of Byres, knight, to a Nobleman at Court, relative to the Trial of the Laird of Auchindrayne and his Son, &c.*¹

[THE following LETTER is a rough draught of a Letter transmitted by Sir Thomas Hamilton to some Nobleman high in power and favour at Court, (probably the corrupt Earl of Somerset); and is evidently intended for the King's perusal. This successful Lawyer and Statesman knew well how to

¹ Dec. 11, 1601.—Now, on the tent of December, ane variance being betwix the Erl of Cassillis and the Laird of Bargany, thay mett in Carrik, quhair the Laird of Bargany and sindrie wtheris war slayne, and diuerse Gentilmenne hurtt. This was on 11 day of December, 1601. And on the 12 day of Maij, 1602, Thomas Kennedy, brother to the Laird of Bargany, slew Schir Thomas Kennedy of Colzeane, kny^t, quha had beine Tutour of Caisillis, in the rewedge of the slaughter off his brother. The quhilk Fead continewis as yitt onreconseellit.—*Anon. MS. Hist. of Scotland*, Adv. Library, A. 4. 35.

please his Majesty's taste for flattery—but, if this is to be taken as a specimen, King James must have been much more of a glutton than an epicure! In the same Collection from which this is taken (*Haddington's MSS.*, Adv. Library, Edinburgh), there is preserved another draught, which is evidently the original, and is extremely corrected and altered—but it is so characteristic, that it shall also be preserved here in the original state, though merely a fragment.

‘HONORABILL AND VERTUOUS LORD,

‘BEING informeit be ane wourthie freind, that your lordschip wes very defyrour to have ane trew and ample relatioun of the proces deduced aganis the Lairdis of Auchindrane elder and younger, for the Mourthouris of Sir Thomas Kennedie of Cullayne, knight, and of Williame Dalrimple, I wes exceeding glaid to have rencountred that occasion to offer to your lordschip this discours, as an earnest of my faithful dispositioun to expres my thankfulnes in matters of greater moment, when ever God shuld grant me the abilitie to performe any seruice worthie of your honour, and correspondent to that great obligatioun whairin your singular fauour and courtesie haue exceidinglie engaged to your lo. Bot when I had written at lenth, all that did concerne that pourpofe, and had it reddie to be sent to your lo., report cumming to this cuntrie of his Maiesteis gracious pardoun granted to James Bannatyne, whairas I did confaue that all men wald acknouledge it as ane commendabill effort of his Maiesteis most iuste, gracious, and judicious clemencie; yet, finding that some deuclilh peopill als venomoullie inclyned to find mater of calummie in his Maiesteis most vertuous actionis, as the wesþ to suck poyson out of the sweitest and most holesome floures, I have delayed my first proiect, to send to your lo. the simpill discours of the proceeding aganis those malefactoris, quhill (*until*) efter Tryell of all that has bene murmured aganis his Maiestie in any circumstance of this action, I might mak the more full and perfyte report, allweill of the materiall circumstances of the proces, as of these incidentis, whairin his Maiestie, having expresse his rare and wonderfull iugement, his vnalterabill constancie and’]

[HONORABILL AND VERTUOUS LORD.]

KNAWING, by informatioun of ane wourthie freind, that efter your lordschip hard the vulgar report of the conuictioun and pvnishment of THE LAIRDIS OF AUCHINDRANE, ELDER and YOUNGER, for *the Mourthour of Sir Thomas Kennedie of Cullayne, knight, and of Williame Dalrumpill*, yow did desyre to have a full and verie particular relation of the whole proceedingis of that mater, becaus my being ey witnes from the beginning to the last act of that proces, makis me abill to giue ane true accompt of euerie circumstance thairof; and the great fauoris and courtesieis ressaue of your lo. have ingaged me in stronger bandis of dewtie nor¹ want of abilitie will permit my seruice to dischaarge; I haue presumed to send to your lo. this discours, rude, informall, and voyde of all ornamentis except treuth, as ane earnest of my desyre to proue thankfull to your lo. and obedient to your commandementis; whilk shuld haue sone cum to your lo. handis, had not this tyme of vaicance² impeded me to find, so speidlie as I did with, the helpis of sum ferollis of the lawers and clerkis, to whom the deduction of that proces was speciallie committed; I did coniecture that your lo. cheif respect in this desyre wes to have *the iustice of his Maiesteis directionis*, in that action, maid als manifest to the worlde as thay ar in the sight of God, and perswasion of his owne conscience (albeit his providence, wisdom, justice, and mercie have fund peopill als abill to suck venome owt of these Royall vertueus as the wesþ to extract poyfoun furth of the most beautifull and healthfull floures, whilk in thay owne place,³ I have remarked, naikedlie, as does best beseme treuth,) acknowledgeing how vnhabill I am to giue the dew luster to these eminent and abundant vertues; and thairfore, if your lo. fall ever think that proces wourthie of the sight of the worlde, I know your wourth and bontie has gevin your lo. power and ane great many rare and excellent spirits, who will be glad to bestow the best floures of thair ingyne and learning, to giue the right foyle to that whilk may concerne his Maiestie, in fame, or your lo.

¹ Than. ² Time of Vacation, when the Courts of Justice do not sit, and when the Lawyers are frequently in the country. ³ The *own* or proper place.

in contentment. And, to the effect the proces may the more easelie to vnderstand, before I cum to the Report thairof, I will premit (*premise*) ane trew Narration of the first motines which involued the Laird of Auchindrane's evill nature in the labyrinth of these mischevous interpryffes; which, be the justice of God, and his Maiesteis admirabill providence and inflexibill constancie, being brocht to light, have overthrowne his life and fortunes.

ANE TREW NARRATION *of the first Motines which involued the Laird of Auchindrane's evill Nature, &c.*

YOUR lo. hes heir the particular Discours of ane Proces, whilk, vpon dyneris respectis, many wyfe men have judged to be verie memorabill. Sum, remarking the bad nature of malicious men, who, measuring be their owne merciles disposition, the affection of vther menis hairtis, can never hope to ressaue frie pardon of those whom thay have mightelie offendeit; and thairfore, forgetting the courtisfie ressaue of those who have remitted to thame great iniuries, faillies nocht to requit thair gude with evill; and at their first advantage, to bereave those of thair lyfe from whom thay ressaue thair owne, as *Auld Auchindrane* did to *Sir Thomas Kennedie of Cullayne*.

Vtheris, did consider, with horreur, the craft and diligence of the Devill vseis keip in his bondage those who he anis fetteris in his snaires; offering to thame allurements to facilitat to thame the Interpryfes, whilk, in thair worldlie considerationis thay judge most liklie to procur the wished endis of thair proiectis; as *Auld Auchindrane's* resolution to cut af all meanis of discouerie of his guiltines of *Cullayne's Murthour* be the *Mourthouring of Dalrumpill*; whairin his sin apperis to have bene so odious in the sight of God, as, for his pvneishment, God permittit his sone to be involued in the guiltines of that sam haynous cryme, as ane preparatiue of the vtter ruyne of that house: Whilk succeding altogidder contrare to thair expectatione, and the verie elementis concurring to the discouerie of thair secret sin, that did not oppin thair eyes and hairtis to sie that manis wit is fillie before God, and that thair strenth is bot duft; bot thay fall be blinded with the presumptione of thair owne judgement; and thairby thinking, that if *Bannatyne*, who wes ey witnesse and actour with thame of *Dalrumpilis Murthour*, wer killed, that thair rested no vther meanes to proue thame guiltie thairof; whilk being constantlie denyed be thame, wald lykwyse cleir *Auld Auchindrane of Cullaynes Murthour*. Thay intended to vse *Penicuke* in the *Murthour of Bannatyne*; and feiring lest *Penicuke* might efteruardis discouer that he had bene moved be *Auld Auchindrane* to kill *Bannatyne*, being fugitiue, as pairtaker with *Auchindrane* and his sone in *Dalrumpilis Murthour*, it aucht (to) put all men in iuste suspicioun that it wes done, for cutting away the meane of the discouerie of *Dalrumpilis Murthour*; thairfore it wes thought expedient that *Quintene Mure of Auchneill* should kill *Pennicuke*, in reuenge of his *Mourthouring Bannatyne*; and swa, *Auchneill*, knoweing no thing of *Dalrumpilis Murthour*, and being not onlie innocent of *Bannatyne's Murthour*, bot the avenger thairof, he should be frie of all suspicioun of the fyrst *Murthouris*, and thay secured of all probatioun that could have bene led aganis thame thairanent; whilk being disapoynted, be *Pennicukis* remorse, and *James Bannatyne's* resolutionn to end his dangeris and miseries, ather be his Maiesteis mercie, or, be ane fetled resolutionn, to accept his death, as the iust pvneishment of his great finnis, in patience. It is evidentlie remarqued that the courfes, grounded vpoun the presumption of ane manis owne wit, ar the verie instrumentis whilk God vses to confound thame in the folie of their owne imaginationis.

Nather could wyfe men neglect to admire, how loath the Devill is to quyte his possessioun of ane sinneris soule; having so contended to menteane *Auld Auchindrane* in his denyall and impenitence, that after his convictioun, when his constancie could nothing avail him, thair wes no appearance that he should either confes or publictly repent the crymes for which he was condemned; whill (*until*) efter ane notabill conflict betuix his sone (*Young Auchindrane*) and the Devill, who still perswaded him, that thair wes no hope of mercie to ane sinner, who had wilfullie and oft periured him self, with horribill execrationis; sum godlie Bischoppis and Ministeris, be lang conference, and many comfortabill af-

furanceis gevin to him of the reddines of Godis frie grace and mercie to all sinneris, who, with vnseyued repentance, ar displeased for thair sinnes; and can dispose thair foules to hope for pardoun, and beg it at his handis;—he wes moved to mak plane and particular declaratioun of the unhappie *Murthour of Dalrimpill*, committit be his father and him self, according to *Bannatynes* Confessioun and thair convictioun. Qubairby, finding his conscience wonderfullie disburdened, and his foule fullie repleineiffed with assured hope of Goddis abundant mercie; did cheirfullie dispose him self to death, as the only way to ane better and ever permanent lyfe; and vsing his best persuasions to his father, that as they wer joyned by bloude, and lykwayes conioyned in the equall guiltines of so hynous ane sin, so he wald consent that thay might joyne in repentance and trew conuerfion; he did so muche pervale with him, that being assisted be the godlie travels of the Bischopis and Ministeris, the father wes broght to so frie and sensibill contritioun, as, in the last houres of thair lyfe, and at the tyme of thair death, thair godlie resolutioun to mak haist to ressaue the eternall joyes, whilk thay expected assuredlie at Goddis merci-full handis, gave als great confort to the behalderis of thair Executioun, as thair wicked lyves had bene offensiue, to those who knew the actionis thairof.

THE dependance of this Proces kept menis myndis in great suspens, dyuerslie distracted, in the expectatioun of the incertane event thairof; the vulgar multitude, alwayes piteing fuche as ar miserabil, without respect of the dangerous consequence of the impvritie of fuche crymes, wishing saistie and releif of the prifoneris: wyfe and godlie men, longing for the plaine discouerie and exemplar pvnishment of the haynous transgressouris, whairof, in thair conscience, thay judged the defendaris culpabill; and vthers, disallowing the preparative of the long imprifonement and rigorous Tryall, ever glaid to sie the appeirances of thair escaip; till God, in his owne appoynted tyme, be fuche meanes as ar before reherfed, did justlie determine this long dowtsum cause.

And albeit I have many tymes earnistlie considered, both the groundis of this cause, and meruellous incidentis and accidentis in the progres thairof, yet no thing hes ever appeired so strange and extraordinar to me, as the blindnes or rather malice of ane great number of oure peopill of all fortis; who, forgetfull of oure happines in the wyfe, equitabill, clement, and moderat regime of oure most excellent King, became dowtfull of the justice of his directionis, in this cause, [For whan I call to memorie, the whole course of his lyfe, from his first concepcioun to this hour, and do compaire the same with the regnes and lyves of vther Kingis, I think we have more reason, with thankfulnes to God, to acknowledge his regne, to be the renouatioun of ane golden aige, nor be¹ malicious pryeing in his holie intentionis and juste doingis, to resemble those, who, vewing most pure and precious jewellis, dois not so mutche delyte thair eyes with the presence thairof, as exercise thair curiositie to espy tasches² in thame.] For God, having, as it dois weill appeir, decreed in his eternall wifdome, to appoynt oure King to be the instrument of more happines to this Ile, nor³ in oure wishies we durst haue requyred: knowing, that the wonders of his preferuatioun, and of the happines of his most rare, most excellent, and most difficill actionis, fould mak his Maiestie more augnst and venerabill, it fall be easie to any man, who fall with ane honest mynd and vnpartiall ey, consider the course of his yeiris, manifestlie to remark, that it hes bene ane continueall exercise of perfyte virtue, beautified with the ouercumming of all fuche difficulties as the wifdome and courage of man could foircast; and whan the dangeris did exceed that measour, than did God visiblie interpone the strenth of his owne hand, as the pledge of his loue, and prouf of his caire, not to suffer a King, so necessar for the Christian worlde, to be ouer suddenlie translated thairfra, to those blissingis, whilk in end he hes prepared for him, among his most deir Elect. Bot to deduce the abregé of his lyfe to the owne right ordour, we must acknowledge, that it pleesed God, in his eternall wifdome, to assigne the meanis of his convoy vnto this worlde, to be the happie conjunction of two of the most nobill, beautifull, and hopefull Princes, who at that tyme wer to be fund vpon earth;⁴ the fuces⁵ whairof, being forefene be the Devill, in his viperous wifdome, to

¹ Than by. ² Flaws, blemishes. Old Fr. *tasche*. ³ Than. ⁴ Henry Darnley and Mary Stewart, Queen of Scots. ⁵ Success.

be the ouerthrow of his kingdome, in this Ile,¹ he did stir vp vnfaithfull subiectis to be instrumentis of so terribill tempestis and deidlie stormes, that his Maiesteis lyfe wes, in his motheris wombe, reduced so neir to the durris of the death, as the tender and most delicat stay of that faire excellent lady, be the accursed poyntis of the crewall daguers of hir faithles treasonabill subjectis, Murthouring in hir owne prefence ane of hir seruandis;² bot as hir courage, surpassing the imbecillitie of hir sexe, and ouercumming her dangeris, did offer this ritche present to the worlde, in the yeir of God 1566; whairbye, his Royall parentis, hauing confaued so extraordinarie joy, as thay did accompt it to be the perfectionn of thair earthlie felicitie. God, who will not suffer those who he hes destinat³ to ane more happie habitationn, to abuse thame selfis with the delytis of the rayne schaddowes of this lyfe, suffered the hellisli complottis of damned subiectis, so far to preuaile aganis thame, as the vertuous actionis of the King his father, being interrupted be that most execrabil Tragedie, practised and performed be that infamous and never-aneuch abhorred traitour, *Bothuell*, aganis his lyffe. The contagious exampill of that vnnaturall Treasoun, did so infect the mynd of ane great number of hir Maiesteis powerfull subiectis, that thay wer not afrayd to ryse in oppin rebelloun aganis hir, lay violent handis vpoun hir sacred persoun, confyned hir libertie within the miserabill boundis of the wylde and vnuholosome *Craig of Lochlerin*, force hir to the abdicationn of hir Royaltie; and whan, as the dexteritie of hir courageous devyse, faithfullie assisted be sum of hir vncorrupted subiectis, had fred hir furth of that miserabill bondage, hir rebellis did suddanlie assembl thair forceis, and in oppin Battell, ouerthrowing that number of dewtifull subiectis who did assist hir, did so maliciouslie pursue that victorie, as scho could nocht find in the whole boundis of that lairge Kingdome, which was hir natieue inheritance, ane place of saif retrait; wharby hir hard destinie, dryving hir to seik refuge in England, sche found be effectis, that '*incidit in Scyllam cupiens vitare Caribdim*,' not enioyeing in it hir libertie one houre, during the whole space of eighteen yeiris of hir lyfe spent in that Kingdome. Bot these afflictionis of hir lyfe, did sa strengthen hir mynd aganis the terrouris of death, and repaire hir so happelie for the entrance to ane better lyfe, that whan the catastrophe of hir miseries brocht hir to ressaue death, efter ane manner so rare and vnaccustomabill to ane Princeffe of hir birth and estait, as the hardest harted beholders, touched with the strangenes of that rigourous exampill, were driven to extreme grief and compassioun; hir godlie resolution and invincibill courage wes so constant, that scho appeired nocht onlie content bot joyfull, that God, haveing vsed hir troubles in this lyfe for ane expiationn of hir sinnes, had gevin hir so full assurance of his mercie and fauour, whairof scho promised to hir self, be the beginning of that dayes passage, ane most blifed and endles fruitioun.—Be thir meanes, his Maiestie being destitute of these helpes of Royall educationn, whilk the caire and knowlege of so excellent parentis wald have procured to him, and standing subject to the danger of the cruell plottis of those who, having treasonablie overthrowne his parentis, could never think thame self frie of impunity for so vnpardonabill Treasoun, so long as he, who, besyde the commoun interest of Princes in the pvneishment of vsurpeing Traitous, wes bund, be dewtie of bloude and nature, to pvnes those who had vsed so butcherlie violence aganis the lyves, libertie, and estate of his parentis. Yit God, in his Providence, did so cairefullie wathe over him, as haveing disperfed that tracheourous combination, and with progres of tyme turned thair wittis and vapines⁴ of these rebellis to wourk aganis vtheris; his Maiesteis lyfe wes not onlie thairby preserved, bot his quarrell wes be thame reuenged. During this tyme and thir dangerous passages, his Maiestie, growing in graccis and yeiris, and finding his realme so miserable disordered, as be the ciuill factionis and warris, not onlie the accustomed barbaritie of the Bordouraris and Hielandmen wes increasfed, bot, be infectioun, had so polluted the whole cuntrie with cruelte and dissensions, that publict factionis, and privat deidlie feidis, did so disquyet everie manis estait, as thair jakkis, knapscas, plait-sleves, and pistoles, wer als ordinar apparrell, to the most pairt, as thair doublettis and breachis; becaus, whatever wes the cause of thair conventionis or

¹ In allusion to the overthrow of the Papal power in Scotland, and the blessings to follow from the Reformation of Religion. ² Alluding to the murder of David Rizzio. ³ Predestinated. ⁴ *Wappinnis*; weapons.

meittingis, fightis or frayes wes the occasioun of thair departing, not onlie at Parleментis, conventionis, tryftis, and mercatis, bot lykwayis at Churcheyerdis and Churches, and places appoynted for exercises of Religioun. The purgatioun of so extraordinar and vniverfall corruptioun, being the task of his Maiesteis¹

Bot that which I have ever thoght most strange and vnnaturall, in all this actioun, is, that efter so many, so lairge and sensibill praiffes of his Maiesteis pietie, iustice, clemencie, extended to all the cornaris, and almost to all the particular² perfonen of his Kingdome, so many subiectis fould haue bene fund, who, in fauour of two men of so wicked lyfe, fould so lightlie haue regairded, and so maliciousslie detracted his Maiesteis directionis, gevin for tortouring of *Young Auchindrane*, and refusing libertie to him self and his father, efter so many yeiris imprisonement: Never considering how his Maieſtie, being evrie way iuste and equitabill, had, in thir menis particular, so small cause to vse thame with rigour, that if the aspired opinion of his cleir conscience had not certanlie perswaded him of thair guiltines, he wald never have either vexed thair perfonen, or restrained thair liberties, aganis the courses of ordinar iustice of his kingdome.

It is fouslish presumption in subiectis to think, that the Kingis whom God hes chosen as his lieutenantis, to regne ouer so great Nationis, fould haue hairtis of no greater excellence than the vulgar fort! If God had not prepared the hairt of Solomon, in his youth, to command the houris child³ to be devyded betuix hir and hir neighbour who claimed the leving bairne, what Judge in the world could certanlie have determined to which of the two the living childe did belong? Whilk nevertheless, Salomon, be ane sentence, seming at first most cruell and vniust, did in end most admirable determine,⁴ to the manifestatioun of the singular wisdome, whilk God had put in the Kingis hairt.

When oure King, the trew Salomon of oure aige, and the most Godlie, wyfe, and learned King that ever bure ane Regall crowne in any Christian kingdome, trowelie representing, having fra his owne infancie gevin so extraordinar promissis of his iugement⁵

THE iust determinatioun of the Proces which did long depend aganis THE LAIRD OF AUCHINDRANE and his eldest sone, having greatlie contented the myndes of manie faithfull subiectis; not that thay did reioice in the calamitie of Gentilmen of that fort,⁶ bot becaus thairby, the iustice of God, in the discoverie and pvnishment of most subtile and dark crymes, was maid manifest to hard haired and vnbelieving peopill; hes also buffied many menis pens to send the report thair of to thair freindis abroad; whairin, albeit at first I did intend to keip silence, and remit the publicatioun of that memorabill actioun to those who wer more curious and skilful nor myself; yet, calling to my remembrance sum notabill circumstances, which, during the incertane event of that procedure, did gine bauldenes to peruerſed peopill, to calumniat the true iustice of his Maiesteis directiones; which now, to his differred commendatioun, is approued to the whole worlde; I have since thought it my duetie, truelie to informe your lordship (whom I know to be so curious and cairefull of no thing as of his Maiesteis honour) of the whole substance of that perfute, craving your Lo. pardoun, if omitting sum parcellis, frairce necessarie to be recorded, I fall tak bauldenes, in place thair of, to remark, that in the course and progres of the most notabill actionis of his Maiesties lyfe and regue, whair of no Prince's aige and fortune hathe ever bene more fertile, his holiest, happiest, and most iuste intentionis have never bene frie of the bitter sting of calumnious detractaris.

In this Discours, I will not follow his methode, *qui in medias res non secus ac notus auditorem rapit*, bot studie to mak the mater so plane to your Lo. as possibill I can, be deduction of the occasionis whilk innolued Auchindrane's evill nature, in the laberinth of these mischevous interpyfes, which,

¹ This is left unfinished; a page is left blank to fill up the rest. ² Individual. ³ The well-known story of 'the Judgment of Solomon.' Sir Thomas had, in the course of the long digression which he made regarding the King's 'rise and progress,' touched on very dangerous ground, and travelled very far out of his way, for the purpose of lavishing the most fulsome praise; being certain that the Letter would be subjected to his Majesty's perusal. ⁴ Terminate; result.

⁵ Here the scroll again breaks off, and three blank pages are left, for farther digression and flattery. ⁶ Rank; condition in society.

be the justice of God and his Maiefties inflexibill conftancie, being broght to light, have ouerthrowne his lyfe and fortunes.

BE birth, he (JOHN MURE OF AUCHINDRANE) was a Gentilman of wourfchipfull difcent, fucceeding to that inheritance, which his prediceffouris in bloude and name had poffeffed almoft foure hundreth yeires. By marriage of the dochter of Sir Thomas Kennedie of Barganie, one of the mightiest fubjectis in the cuntrie whair he dwelt,¹ having increffed the ftrenth of his freindfchip and prefumptioun of his hairt; and thinking, that no thing could impeid the abfolute power of *Barganies* freindfchip, in Carrik, bot *the Erle of Caffilis howfe*, whilk, be ane long difcent of vertuous Nobilmen, for wourthie feruices done to thair Princes and cuntrie, had differved and reffaued fo lairge recompens in landis, honouris, and iurisdictionis, as extending thair branches in all the corneris of that cuntrie, and keiping faithfull dewtie and obedience to thair Prince, they had, be lawful meanes, obtaned aduantage of honour and commandement ouer all thair nightbouris; till of lait, the father of this Erle deceaffed, and leiving his fones infantes, thair did not reft of that cheif howfe, any man, abill to menteane the dignitie and rightes thairrof, bot for *Sir Thomas Kennedie of Cullayne*, brother to the deceaffed Erle, and vncke and *Tutour* to this Erle of Caffilis; whom, vpoun emulation and inuie, before mentioned, Auchindrane intended to Murthour: ffor which pourpofe, having associat to him felf nyne or ten weill chofen compliceis, thay, vpon the day of (January), or thairby, in the yeir of God 1597, come to the towne of Maybole, whair *the Laird of Cullayne* maid than his ordinar refidence, and tryeing² that he wes at fupper in the houfe of (*Sir*) *Thomas Nifbet*, and wes thairfra to go to bed to his owne ludgeing; Auchindrane and his complices darned³ thame felfis in (*Sir*) *Thomas Nifbetis* gairdine, throw which the Laird of Cullaynes way lay to his owne howfe, and, in his paffage, having delaifched⁴ at him aucht or ten fchot of hagbuttis and piftolettis, in the boundis of ane ftrait allay, yit he being faif of any hurt thairwith, and perfaving thame with thair fuourdis, moft cruellie to perfew his lyfe, he being alone, (becaus his feruandis, not thinking that any man had reafon to offer him harme, did not attend him,) he was forced for his faiftie to flie; in which chaice thay did approche him fo neir, as he had vndoutedlie bene ouertane and killed, if he had not aduentured to rin afyde and couer him felf with the ruines of ane decayed houfe, whilk, in refpect of the darknes of the night, they did not perfave; bot fill followed to his ludgeing, and fearched all the corneris thairrof, till the confluence of the peopill of the towne⁵ reforting, whair thay hard fuche a fray, forced thame to retire. For which fchamefull and barbarous attempt, the faid Sir Thomas Kennedie of Cullayne, having focht redrefs be law, did thairby dryve Auchindrane in fuche danger of ruyne, as neceffarlie did conftayne him to couer his malice with fchew of repentance: And for fatisfactioun of his bypaff offence, and gadge⁶ of his future dewtie, to offer his eldeft fone in marriage to Sir Thomas Kennedie's dochter: Whilk, be interceffion of freindis, being accepted, and thairefter the marriage accomplifhed, the Laird of Cullayne did fo affect the gude of the Laird of Auchindrane and his hovfe, as it was no lefs dere to him nor⁷ his owne; confidering, that in thair hopes and wifhes, it wes to be poffeffed be the posteritie of thair conioyned difcentis.

In which termes, materis continowed, vpoun Cullayne's pait, faithfullie and in hairt, and vpone Auchindranes, in trefonabill profeffionis; whill,⁸ be the deceas of *Sir Thomas Kennedie of Barganie*, his fone, *Gilbert Kennedie of Barganie*, ane young Gentilman of great courage, fucceeding to him, his inexperienced youth wes feduced be Auchindrane to beleve, that the tyme wes proper to raife his houfe, from the fecund place in the cuntrie to the firft, be the ouerthrow of the *Erle of Caffilis* houfe; whilk he proponed not to be difficill, for many probabill reafonis: Which, finding approbation, in the ambitious mynd of the young Gentilman, all ocafionis of haitrent wer fo fostered be feditious instrumentis on ather fyde, that in fchort tyme the pairties wer broght to fuche profeffion of inimitie, as *the Laird of Barganie*, intending, in contempt of the Erle, to go by his 3et,⁹ in his paffage from Aire to

¹ In the Bailliary of Carriek and shire of Ayr.

² Ascertainng after enquiry; discovering.

³ Concealed; hid;

secreted.

⁴ Let off; fired. Old Fr. *delascher*.

⁵ Maybole.

⁶ Pledge. Fr. *gage*.

⁷ Than.

⁸ Until.

⁹ Contemptuously to go past the Earl's gate, without so much as enquiring after his health, he being his Chief, &c.

., and the Erle, resolving rather to die nor¹ digest that publick indignitie; having bothe firethensened thame selfis with fuche forceis, as vpon so suddane occasioun thay could assembill;² thay rencountred vpon the ffieldis, neir the Erles howse of, whan ffoure or ffyve hundred men entring in flight, it wes verie liklie that the eagerneis of the Cheifis sould have broght thair peopill to great butcherie, if *Barganies* courage had not carried him so headlong to the rasche invasioun of the *Erles* peopill, lying at cover, vnder the advantage of ditches, as him self raffaving ane deidlie musket schot, and *Auchindrane*, being also maid vnhabill to brak his horse, be ane verie dangerous schot in the thigh, thair trowp, wanting leaderis, fled, and left the feld to the Erles better fortune.

Which, no thing abating *Auchindrane's* malice, he did not cease to stir vp *Thomas Kennedie*, brother to the lait slayne *Barganie*, to be assistand to him, in daylie ambushes, for the *Erles* death; whairin, not prevailing, in respect of the Erles power and circumspectioun; at last, *Auchindrane*, determining rather to ouerthrow honour, promes, conscience, and all bandis of dewtie, nor³ to misse sum fort of reuenge; he concludit to Murthour the before named *Sir Thomas of Cullayne*, ane mater most easie to be atcheved; becaus the Gentilman wes, in his owne confait, fullie secured of all parrell fra thair factioun, for that he had abstained from assisting his newew the *Erle* in his querrell aganis *Barganie*, alsweill becaus he wes godfather to *Gilbert Kennedie of Barganie*, as that his mother and the Erles grandmother be his father, wes ane dochter of the house of *Barganie*: Which respectis, making him exceidinglie to regrait thair vnnaturall inimitie, he thocht it more agreabill to his dewtie to reserve him self newtrall, in thir unhappie diffentionis of his kinsmen; thairby, to watche occasionis and reserve equall credit and trust of bothe pairties, to be ane instrument of thair reconcilioun, nor be his kyndnes to one of his kinsmen, be vnnaturall and vndewtifull to the vther.

In this estait, being onlie intentive to his owne adois,⁴ whilk in the moneth of, in the year of God,⁵ did requyre his resort to Edinburghe, thair to consult with his lawers in his wech-tie buffines; he send his seruand to Maybole, to seik *Auchindrane*, and aduerteis him of his purpose; with direction, if he missed him thair, that he sould certifie him, be Letter, of his intended journey; to the effect Auchindrane might, wpon the nixt day, meit him vpon the way, at, and informe him of any thing he wald with him to do for him in Edinburghe, seing it wes bot one travell for him to do his freindis buffines and his owne. This seruand of *Cullaynes*, missing *Auchindrane* in Maybole, desyred *Mr Robert Mure scholemajster at Maybole*, to wryte ane Letter of that substance to *Auchindrane*; who did so, and sent it be ane boy of his schole, called *William Dalrumpill*, who finding *Auchindrane* at his house of Auchindrane, with his cusing, *Walter Mure of Cloncaird*, ane deidlie ennemie to the *Erle of Cassillis*; so sone as he fand him self certified of *Cullaynes* pourpouse and dyet, he dismissed the boy, commanding him to returne bak in haist, caireing the Letter with him; directing him farder to schaw to his maister and *Cullayne's* man, that he had not fund him at his howse: And immediatlie thairefter, resolved with his cusing *Cloncaird*, that this occasioun of reuenge of *Barganies* Slauchter, be *Cullaynes* Murthour, wes nocht to be onesslipped: And, efter sum deliberatioun, concluded vpon the choise of the actonris, and maner of the execution; making aduerteisment thairof, alsweill by Letter sent to *Thomas Kennedie of Drumrquhie*, be *Makadam*, futeman to *Young Auchindrane*, as by message to *Cloncaird*; who, finding *Thomas* most reddie to embrace that opportunitie, the said *Thomas Kennedie*, *Walter Mure of Cloncaird*, and foure or fyve seruandis with thame, weill armed and horsed, convoieing thame selfis neir the way appoynted be *Cullaynes* Letter, for his meiting with *Auchindrane*, did ly at await, till *Cullaynes* hy-cumming; who, being in full securitie of his dangerles estait, ryding vpoun ane paissing naig,⁶ and having with him ane seruand onlie, thay suddenie surprysed him, and with thair pistoles and suourdis gaue him ane number of deidlie woundis:

¹ Than. ² See a full account of these proceedings in 'THE HISTORIE OF THE KENNEDYIS' before referred to—and also ORIGINAL PAPERS in this Appendix. ³ Rather than be deprived of some sort of revenge against the name of Kennedy. ⁴ Affairs; concerns. ⁵ 11th May, 1602. ⁶ A pacing, ambling nag; a hackney, for his journey; not a swift and powerful horse, by which he might possibly have escaped. See 'The Historie of the Kennedyis.'

And, nocht content to haue so barbaroullie and traitroullie bereft him of his lyfe, spoyled him of ane thousand merk of gold, being in his purse, ane number of golden buttonis vpon his coat, and sum ringis and vther jouallis: For the which villanous fact, the actuall *Mourthouraris* being first outlawed and thairefter forfalted, and *Auchindrane*, vpoun vehement presumptionis of his devyfe and causing execute so execrabil and cryme, being summond to vnderly the law, did bouldlie compeir: And feing that the persewaris, for want of sufficient evidences, wer not than to aduenture his Tryell, fearing that he might be cleunged,¹ and so, perpetuallie fred of that cryme; whan he saw them adiourne thair persute, he seemed greived thairat, as bragging excedinglie of his innocencie, whair of he had gevin pruiſ, be offering him self to tryell of law, if thair wer within the kingdome any man of *Cullaynes* kindred or freindschip, who wald advow² him any wayes participant of the devyfe or executioun of that Murthour, he wald reddelie offer him self in that querrell to the tryell of *COMBAT* to the death: And so, wanting ane pairtie,³ wes dismissed; more frie, in the persuaſioun of the most pairt of fuche as wer present, nor in his owne conscience, whilk geiving him many alarmes, that so long as *Dalrumpill*, who wes carrier of the Letter, wes within the cuntrie, the mater might be discovered be him. Heiring that *Young Cullayne*, sone to Sir Thomas Kennedie, had begun to try him verie rudelie, Auchindrane drew Dalrumpill to his house, and keiped him cloise, be the space of nyne or ten oulkis;⁴ whairwith the boy weireing excedinglie, he sent him thairefter to the *Ile of Arrane*, to the *Laird of Skelmurtrie*,⁵ his great freind, willing him to keip him as ane boy of *Thomas Kennedie of Drumvirkies*: Whair he being reſſaued and reteaned ane long space, the boy, finding him self neglected and vnprovyded of many necessaris, returned to *Muncatoun*, to the house of ane vncle of his owne;⁶ which came no soner to Auchindrane's knowledge, bot incontinent he sent for him to his house of Auchindrane, whair he of new kept him cloise, whill, be paction with ane of his couſingis, called *James Mure of Fleet*, he send him to Leith, to be transported to the *Low-cuntries*, to serue as ane sodgeour in the *Lord Baleleuchis Regiment*;⁷ hoping that he might either thair end his life, be fuche accidentis as daylie befallis to souldiouris, or at least be secure from discouerie or persute of fuche as he did stand in feare off. But whan the senseles blindnes of his conscience had gevin sentence of perpetuall securitie to him from all discouerie of his abominabil transgressioun, in respect of *Dalrumpillis* absence, be the space of fyve or sax yeiris; the ey of Goddis justice, whilk never sleipis, convoyed him back to Aire, the place of his natiuetie, whar, having onlie staved with his mother and sifter ane night or two, he did address himself to *Auchindrane*, who, aduertised of his returning, and thairby stinged with fearfull tormentis of conscience, he take ordour for Dalrumpillis stay in the howse of his seruand, *Walter Mure of Glenheid*: And the nixt day, in the afternone, being the . . . day of September, in the yeir of God . . . ,⁸ he send his houshold seruand, *James Cuninghame*, to bring him to him; and rencountering with thame, in his way from his howse of Auchindrane to ane vther howse of his, called *Ballachtowle*,⁹ him self and his sone, *Young Auchindrane*, had conference with *Dalrumpill* ane great pairt of the way, till they came neir the House of *Chapeldonan*,¹⁰ perteaning, by inheritance, to Auchindrane, and possessed be his tenant and allye,¹¹ *James Bannatyne*, with whom thay left that night *William Dalrumpill*, calling him be ane changed name, '*William Montgomerie*:' Whair he staved all the next day, whill, be direction of *Auld Auchindrane*, James Bannatyne did bring Dalrumpill, about ten a clok in the night, to the *Sands of Girvan*, whair John Mure, elder of Auchindrane, and James Mure, younger of Auchindrane, wer attending¹² thair cuming: At meitting, *Auld Auchindrane* began to declaire to his man *Bannatyne* that he

¹ Literally cleansed; acquitted. ² Avow; openly challenge. ³ Pursuer or prosecutor. ⁴ Weeks. ⁵ Sir Robert Montgomery. He married Margaret, eldest daughter of the Laird of Drumlanrig, Sir William Douglas. ⁶ It cannot be traced who this individual was. ⁷ SIR WALTER SCOTT, who raised a regiment of his name, and served in the Wars of Maurice, Prince of Orange, against the Spaniards. For his singular merit and services, he was, Mar. 16, 1606, created Lord Scott of Buccleuch, being the first person of that celebrated Family who had been ennobled. His son, Walter, second Lord Scott of Buccleuch, also commanded a Regiment in the service of the States of Holland, and was created Earl of Buccleuch, Lord Whitechester, and Eskdale, Mar. 16, 1619. ⁸ 1607. ⁹ Situated near Girvan. ¹⁰ Situated about a mile and a half from Girvan, on the sea-shore. ¹¹ 'Kinnisman to his wyfe' is deleted, and 'allye' interlined. ¹² Waiting. Fr. attendre.

had bene in perpetuall feare, since *Cullaynes Slaughter*, to be discouered as guiltie thair of;—that for efchewing that danger, he had sent furth of the cuntrie this *Dalrumpill*, who brocht to him the Letter of aduerteifment of Cullaynes dyet; and whan as he had materis at that poynt, as be his trauelis,¹ *Young Cullayne* and *Thomas Kennedie* wer maid to allow of the conditionis whilk he had fet downe for reconciliatioun of thair querrell, for the Murthour of Cullaynes father, this man wes unhappellie returned, be whom his whole devyfe wald be difapoynted, and his danger renewed. That he saw no remeid bot to red *Dalrumpill* furth of this lyfe, since he could not vtherwayes be kept out of his way. Whairvnto *Bannatyne* making anfuer, that it wes ane cruel pourpose to Murthour the poure innocent youth, speciallie feing thay might send him to *Ireland*, to be faiflie keiped thair, till the agrieance wes perfytted betuix *Cullayne* and *Drumvquhie*: Auld Auchindrane semed to inclyne sumwhat to that expedient; and in the uncertaintie of his resolution, turning towardis the pairt whar his sone stuid, of pourpose, as appeired, to have consulted with him, *Young Auchindrane* perfavied thame no foner (draw) neir, bot, thairby assuring himself of thair assistance, in executioun of that whilk his father and he had formerlie concluded, he did violentlie invade *Dalrumpill*, rushed him to the ground, and never left him till, helped by his father, with his handis and kneis he had strangled him. And then, thinking to have buried him in *the Sandis*, whirby no mark fould remayne² whilk might raise any suspicioun of his Murthour, in that place, thay preassed to mak vse of ane spead and schoule whilk *Young Auchindrane* had brocht with him for the pourpose; bot finding that no hole wes foner cassin be thame in the Sand, bot wes alfone filled agane with the water and sand that schot in it, thay wer forced, efter lang travell, to draw him in the sea, alsfar as they durst wade, hoping that ane vtterlie wind³ fould carie his deid corps to *the Coast of Ireland*: Whilk not succceeding according to thair expectatioun, the corps staving all the nixt day in the verie place whar they left it, they passed that day in meruelous anxietie, for feir of discouerie; till the nixt night, searcheing the corps to have buried it, they could not, be any searche, find it, becaus the winde had carried it to the Sea, whair it wes tossed continuallie be the space of fyve nychtis, till the Fryday following, that God, deineing (*deigning*) to vse that meane, for manifestatioun of thair hid iniquities, brocht *Dalrumpilis* corps bak to the verie place whair, sex or seven dayis before, he had been Murthoured: Whilk being perfavied be sum cuntrie peopill, the corps wes cairied be thame to the nixt Church yeird, and thair buried.

Bot the report of so strange ane accident, having raised suspicioun in *the Erle of Cassilis* and sum of his friendis, who had heard of *Dalrumpilis* returning in the cuntrie, that it might be he had pairt in that turne, it wes thought fit be the Erle and dyueris of the Ministrie⁴ of that boundis, that intimation fould publictly be maid in Aire, being the heid burgh of the schyre, and at the Parochie-Kirkis to landward, that fuche ane corps, being fund deid vpoun the coast, wes to be sene at *the Church of Girvan*. Whilk being accordinglie publeissed, the corps wes raised, and amongs vtheris, sighted be *Dalrumpilis* mother and his *sister*, who efter diligent consideratioun of the propoitioun and markis of his bodie, assured thamefelfis and vtheris, that he wes the mourthoured man! The opinion of *Auchindrane*s guiltines of that Murthour becam so vniuerfall, as it began to be talked of amongis his owne seruandis and in his owne houe, and thairby himself, his sone, and thair man *Bannatyne*, so confused, as thay knew not how to cleir thame self of that vylde imputation; till going to Aire, and meitting with *James Dalrumpill*,⁵ cusing germane to *Young Auchindrane*, by his mother, he did informe thame of the schamefull opinion wes had of thair guiltines of that foule Murthour; advyfing thame, that feing it wes not faif for thame, to offer thame felfis to the Tryell of Law, for ane Murthour, whair of all men thought thame so guiltie; and if thay, being challanged be *the Erle of Cassilis*, fould be fugitive for so haynous a cryme, thair freindis could not with credit do for thame.⁶ It was fitter, that they fould kill *Hew Kennedie of Garriehorn*, servant to the Erle of Cassilis, for dyueris proba-

¹ Pains; trouble.² By burying him within the flood-mark; so that, on the reflux of the tide, all marks of the struggle and foot-marks, &c. might be effaced.³ An off-shore or outward wind.⁴ Clergy; Ministers.⁵ 'Sisteris sone to the Lady Auchindrane, and so cusing,' deleted.⁶ Support or maintain them, while fugitive.

bill querrellis whilk thay had against him : Whair of the occasion did presentlie offer, in respect of his being singill ¹ in *Aire* ; whilk being done, thay might ever pretend, that the danger of that cryme, and feir of the rigour of the Erle, wes the onlie caus for the whilk thay wer fugitiue ! In whilk caice, nevertheles, thair freindis might, without reproche, do for thame ; becaus, albeit the fact wes vulau-full, it wes not dishonest, since it proceeded vpon professed querrelis, and might be done publictly ; and so, thay be fugitiue, without infamie ! They presentlie imbrafed the expedient, and provyding thame selfis of pistoles and vther armour, thay invaded Gariehorne,² schott thair pistoles, and vsed all vther meanes to have killed him. Bot finding, that it wes ane mater more difficill, to ouirthrow ane gentleman, armed with gude courage, in ane lauffull defense, nor³ to Murthour innocent men, voyde of apprehension of danger and meanes of defence, all that thay reported of that inuasion, wes ane hurt of Young Auchindrane in his right hand, whairby he became almost lame of it.

Be this new iniurie, THE ERLE OF CASSILLIS persaving that thair lyves wald end, before thair malice aganis him sould diminish, he resolued to strengthen him self be all fuche aduantage as Law sould giue him ; and having chalenged thame bothe for the *Murthour of Dalrympill*, and for the Inuasion of his seruand with prohibit vapis,⁴ thay go to the horne ;⁵ professing alwayes, that if thair vsing pistoles aganis *Gariehorne* might be remitted to thame, thay wald ever be reddie to enter and abyde Tryell of *Dalrympillis Murthour*. Bot his Maiestie, being trewlie informed of thir proceedingis, efter serious considerationn of the circumstances, than consaued so constant ane opinion of Auchindrane and his sones guiltines of Dalrympillis Murthour, that he assured him self, that if thay wer tane and dewlie examined, thay wald vndoutedlie be brocht to confess it. And thairbye, inspyred with his accustomed zeale to justice, gave secret Commisshoun to the Erle of Abercorne, that he wald not omit ony occasion to apprehend those suspected personis ; whairin the Erles diligence had so gud succes, that within schort space, he did rencounter and tak *Auld Auchindrane*, and enter him prisoner in the Towbuith of Edinburgh ; whair of, hes sone had no soner knouledge, bot inagining with him self, that it wer easie for his father and him self to conceall thair crymes, be obstinat secrecie, if *Bannatyne* sould not be brocht, by examination and confrontation, to reueale the treuth and discredit thair denyall ; he instantly raid to *Ballintrae*, whair *Bannatyne* wes for the tyme, persued him, for all thair saifties, to retire to *Ireland* ; provyded and furneished him with victuallis and necessaris, aue bot⁶ for his transport, recommended him, by his Letteris, to his vnclie *Thomas Kennedie of Drumquhie*,⁷ gave him assurance that be his absence, he sould not tak any proffeit of the land quhilk he had of thame, nor no vther help, whil thay wer abill to mak to him. And be *Bannatynes* remove, becuming confident, did suspend his Horningis, be caution for his compeirance to vnderly law ; desyring no thing so muche as that he might be precipitatlie put to ane Assyse ; vpon hope, that the lak of verification, in ane mater so clandestine and obscure, and the assistance of his great and gude freindis, sould procure to him vndouted absolutour ;⁸ and thairby, being frie of all dangeris of law, wald be more abill to procure his ffatheris libertie and declarationn of his innocencie. Bot, being anis entered, examined, and vpon great caution⁹ lett to libertie, and thairefter his cautioner chaired to re-enter him, he, remitting no jote of his former confidence, compeired the day appoynted, and being than re-examinat, and be the commendabill industrie of my *Lord Chancelar*, and vtheris of the Counfall, appoynted for his Tryall, drawne in sum materiall contrarietie ; vpon signification thair of to his Maiestie, directionn wes returned, that not onlie he sould be reteaned, bot if he wer obstinat, sould be coerced, be *Tortour*, to discouer the trewth ! Whilk being accordingly performed, be those of his Maiesties Counfall, to whois secrecie and faith that charge wes committed ; the *Young Auchindrane*, pairtly confirmed be the strenth of his great courage, unhappellie bestowed in

¹ Single ; unaccompanied.

² Hew Kennedie of Gariehorne, called in the Act of Seeret Council, Feb. 5, 1602, 'The Guidman of the Ballot,' probably from being Lessee or tacksman of that farm.

³ Than.

⁴ Wappinnis,

weapons, which were by Act of Parliament prohibited from being used by private gentlemen, excepting in his Majesty's service.

⁵ Permit themselves to be denounced rebels and put to the horn, by virtue of Letters of Horning passing under the Signet, rather than present themselves for trial, as was previously arranged.

⁶ Boat.

⁷ One of the forfeited murderers of Sir Thomas Kennedy.

⁸ Acquittal. Lat. *absolvere*.

⁹ Bail ; security.

pruiffis of that kynd, and pairtlie be the craftie advyfes and aduerteifments of his ffather, convoyed to him be the counfile of fum thair welwillaris, who take the advantage of the cairelefines of thair keiparis; he did endure the extremitie of that infufferabill torment, with fuche conftancie, that whairas, it wes hoped that the veritie of the accusation and extremitie of payne fould have forced him to ane trew Confessioun, the event proved fo far contrarie, as he refolving, with filence, and fouffrance of ane fchort payne, to redeme his libertie, and to adde the hope of many yeiris to his lyfe.

The moft pairt of thofe who hard of the event of that Tryall, the forme whair of wes muche miflyked, did confaue fo constant opinion of his innocencie, as not onlie the vulgar fort did publeis the fame, and regrait the extraordinar rigour vfed aganis him, bot fum Nobilmen and Counfallouris did affist his Supplicationis for his libertie, alledgeing many reafonis, why, with reafon, it could not be refused him: That ane man of his birth and qualitie had reffaued hard aneuch meafour, being *put to Tortour* for ane cryme whilk nather did concerne his Maiefties perfone nor eftait, albeit, efter fo gude pruiſ of his innocencie, be his fingular conftancie in fuffering that tryell; whilk no thing could have refifted, bot the integritie of ane vnſpotted confcience; he fould not be ouercharged with ane fecund oppreffion, in denying to him his native and lafull libertie; ſince he did offer aither to vndergo preſent tryell, or, if his ennemies did rather chuſe, to prorogat it to ane tyme more fit for thame, he wes content to find caution, not vnder the pane of ane thouſand merkis preſcryved be Act of Parlement to ane man of his eftait, bot, for removing of all ſcruple of his not compeirance, he fould bind his freindis vnder the payne of *Twentie Thouſand poundis* for his re-entrie, whanſoeuer he fould be chairged to that effect: Which wes fo oft requyred and vehementlie preafſed, that my Lord Chancellor, ouerem with the continouall importunitie of *Young Auchindranes* favouraris, did yeild, that aduerteifment fould go from the Counfall to *HIS MAIESTIE*, of *Auchindranes* fate, and of the inclination of ane great pairt of the Counfall to yeild to the ſam. Whairwith, his Maieſtie, no whit diverted from his former reſolution, ſignified his pleaſour to be, that in no caice, nor vpoun no condicioun, he fould have ony libertie; being reſolved in his confcience, that he wes moſt guiltie of that Mourthour; and that God, in his juſtice and appoynted tyme, wald maniſeſt the ſam: Whairby, my Lord Chancellor, ſtrengthened be the expreſſ Warrant of his Maieſties directioun, proceeding of his Royall motine and certain knowledge, did fo dewlie obey his Maieſties command, that many tymes thairefter, whan the moſt pairt of the Counfall, abuſed with vntrew probabilities, and inclining to muche prepoſterous pitie, did preaſſ that *Young Auchindranes* Supplication might be red and reſaue anſueir from the Counfall, be the voices of the moſt pairt of thofe who wer preſent, according to the inſtitution thair of and cultume inviolablie obſerved.

My Lord Chancellor, perſaving, be thair vttering of thais preconfauned opinions, that be pluralitie of voeces it wald be ordaned that libertie fould be granted to *Auchindrane*, vpoun caution, vnder great fowmes for his re-entrie whan he fould be chairged; did oppone to thair opinioun, grounded vpon the vſuall forme of that judicatur, his Maieſties expreſſ commandement, proceeding from his abſolute Royall power, whilk he wald never bring in queſtioun, ſince no man could deny that his Maieſtie, vpoun cauſes knowne to him ſelf, might commit and reteane in wairde any of his ſubiectis, who in his confcience he knew to differue the ſam; and that it wes preſumption to his ſubiectis, ſpeciallie Counfallouris, any wayes to conteſt in that poynt, efter his Maieſties lafull pleaſour fo oft and fo expreſſie declared.

My nobill Lord, it wer heir verie eaſie for me to juſtifie the courſe of *HIS MAIESTIES* proceeding in this particular, and not onlie refute the popular errour of the preſumptuous multitude, bot alſo, with infallibill reafonis, to condemn the vntymous pitie of ſum of better fort, nather remembring the obligatioun of thair place, nor the pruiffis of ſo many bypaſt accidentis, whairin his Maieſtie, voyde of all paſſioun and particular,¹ and onlie moved by confcience, and loue of juſtice, had ſumwhat diuerted from

¹ Partiality; bias, or leaning to the *quarrel* or cauſe of either of the parties.

the common pathe of ordinar Justice, without respect to popular murmur; so let the world to lie, in end, be his most notabill conclusionis, how his purposes, tending to vnpartiall Justice, wer assisted be the fauour of God, and be heavenlie inspirationis, conducted to endis, confortabill, and almost miraculous! Bot, becaus I salbe more abill perfittlie to performe that pairt, whan in the end of this actioun I salbe strengthened be the credit of ane faithfull and conscionabill Assyse, and muche more be the Confessioun of the pairties, extorted be the power and Prouidence of God, I will referue it that place; and following furth the course of this Narrative, subioyne thairto the Judicial Procedure and Sentence, whilk was never thocht to be in the way of any probabill expectatioun, till *the Erle of Abercorne*, by secret and instant dealling with sum of his freindis in *Ireland*, fand meanis to tak *James Bannatyne*, and bring him to Scotland, to his howse of Paislay; whair *Bannatyne*, efter the reherfall of all that Tragedie of *Dalrumpills Murthour*, having subioyned the maner of his owne taking, whairin he feimded to acclame sum promeis, maid for the saistie of his lyfe: The Erle did forthwith judge that dealling, so contrare to his honour and his Maiesties intention, as he instantlie assured *Bannatyne*, that he never did intend to have him vpon any futchie conditionis. Bot being vnwilling that whan he sould be presented to justice, he sould reproche to him the brek of condicion maid be any whom he had employed for his apprehensioun, whairby the heararis might tak libertie, aither to beleve or not beleve *Bannatyne's* affirmatioun, and thairby bring his honour in question; he gane to him libertie to go frie out of his house, with assurance, that for the space of ten dayes he sould be vnperfused be him or any of his, geving him space to provyde for his saistie, aither within this realme, or be removing furth thairof; aduerteising him thairwithall, that that terme being expyred, he wald bestow his owne travels and the assistance of all the friendis he had in the world to apprehend him, whairever he might be had, either quick or dead! So *Bannatyne*, being left to ane bodellie libertie, whilk neuer fred him of terrour of conscience, and fear of death, alswell in respect of the suorde of his Maiesties Justice hanging abone his head, as that endles perfute, whilk he knew *the Erle of Abercorne* did intend against him; bot most of all, in respect of his knouledge, that *Auchindrane* had, of lait, devyfed and practeifed many meanes to cause *Murthour* him in *Ireland*, thairby to prevent the danger quhilk *Bannatynes* Confessioun might bring vpon him, if, be falling in *the Erle of Abercornes* handis, he sould have bene broght to Ed^t, examined and confronted with him and his sone: Being also informed, that whan *Young Auchindrane* caused deale with *the Erle of Dumbar* for his libertie, he had offered that his cautioneris sould bring *Bannatyne* in, aither quick or deid! The Erle had verie judiciouslie answered, that he did well believe that *Young Auchindrane*, being frie, wald vnfaynedlie do his best to bring in *Bannatynes* head, whairof for his pairt he wald be sorie, as losing ane of the best meanis of the discoverie of thair guiltines, whairof he in his conscience wes resolved! Thir consideratiounis did force *Bannatyne* to prostrat him self at the Counsals seit, offering him self, without any condition, to reveill the whole treuth of that *Murthour*, and to verifie all that he sould say in *Auchindrane* and his sonis face; hoping, be the assistance of Gods gude Spirit, to bring thame to ane Confessioun of that vdenyabill treuth; onlie craiving, that if the Counfall fand him trew in all his speachis, and to be ane meanes to discover the wickednes of these men, who, having drawn him unhappellie in the participation of thair mischief, had so ingratellie and wickedlie devyfed to *Murthour* him self, thar Lordschips wald be pleased to recommend him to the Kingis mercie, whois pleasour he sould joyfullie fulfill, wer it in his lyfe or in his death!

He wes commanded to mak ane trew Narration of *the maner of Dalrumpills death*; whilk being writt be the Clerk of Counfall, and *Auld Auchindrane* broght in and examined and confronted with him, and being contrare to him in all the poyntis of his Deposition; afferming impudentlie, that *Bannatyne* wes seduced and conduced be his vnfreindis (*enemies*), for desyre of his lyfe and landis, to avow these vntreuthis vpon him. Thay wer so directlie opposite to vtheris, as *Auchindrane* appeired more craftie and *Bannatyne* more simple and trew in his Deposition; bot bothe of thame so confident, that not

onlie evrie ane of thame menteaned thair owne Declaratione; bot whare as Bannatyne had prostrat him self vpon his kneis, and directing his eyes and handis to Heaven, had, with tearis, exhorted Auchindrane 'to have remorfe of his great wickednes, and to confes that Murthour, whilk God wald not suffer him any longer to conceale! Assuring him, that if he had bene innocent of that cryme, all the land of the Kindome, se¹ the faiftie of his owne lyfe, sould never haue perswaded them (him) to pre-judge his maister, who he had so deirly loved and followed in many dangeris, whairin he had adventured his lyfe and estait, without feir or respect of the best subiectis in the cuntrie.'—AUCHINDRANE answered, that 'he hoped God wald nocht so reiect him, as to permit him to confes so infamous vntrewth of him self, and douted not bot God wald move Bannatyne to beir witnes to his innocencie, and how, be what perfonas and meanes, he had been seduced fallie to accuse him!'

Whairby, the Counfall, being broght in admiration² of so great obstinacie, and hoping that the sone, being confronted with *Bannatyne*, might be fund perhappis less confident: When thay wer broght in thair presence, and examined, confronted, re-examined, and tryed, be all the best meanes that the experience or jugement of wyfe and well affected Counsalouris could affurd; nothing wes hard bot direct contrarieties, confidentlie confirmed be execrabil oathes! So dyueris whole dayes being spent in Examination of these parties, and many Witnессes who wer thought ony wayes abill to furneis light to this obscure caice.

At last, whan no hope of any farder discouerie wes expected, THE LORDIS OF SECREIT COUNSALL concluded, that vpon the . . . day of July instant, these perfonas sould be put to thair TRYALL: And for that pourpose caused Summond ane sufficient number of Gentilmen of gud report, to pas vpon thair ASSYSE; and did lykwayes appoynt my Lords President,³ Secretar,⁴ Justice Clark,⁵ Meidhop,⁶ Kil-lyth,⁷ and Wrightisland,⁸ to be ASSESSOURIS to the Justice in this singular cause, whairin the inclination of the peopell wes so fauorabill to *Auchindrane* and *his sone*, that verie many did allege, that it wes requisit that *Bannatyne* sould be first put to an Assyse; and being convict, as of necessitie he behoued to be, in respect of his owne Confessioun, and Execute to the death, as he had well deserved; his constant ratification vpon the scaffold of his former Depositionis, and seilling the same with his bloude, at his death, might than put thame in sum opinion of *Auchindrane's* guiltines, whairof vtherwayes they had never sene any appeirance. Bot the Lordis of Counfall, thinking it more agreabill to reason, that⁹ [those?] who wer thought all guiltie of ane fact, sould go to ane com [mon Assise?] and that the gentilmen of Assyse, whois consciences [might?] susteine the chaarge of the Judgement to be gevin in so we [ightie?] a cause, sould haue all the thrie Defendaris at ones in thair presence, that so thairby thay might be resolued of whatsoeuer thay sould think fit to demand of thame. Thair Lordschipis followed thair first ordonnance, and vpon the said [17th] day of Julie, efter ellevin a klok, cumming to the ordinar place of Jugement, did cause bring the Defendaris from thair feural prisionis to the bar, whair Sir Thomas Hamilton of Byres, Knight, his Maiesties Aduocat, compeiring as persewar, did exhibit ane DITTAY aganis the saidis Defendaris, desyring my LORD JUSTICE to put thame to the Tryall of ane Assyse; who, intending no wayes to preiudge the Defendaris of the benefite of Law, gave to thame libertie to name those whom thay desyred to be forespeakeris¹⁰ for thame in thair defence; who naming¹¹ ['Mr Johne Ruffell, Aduocat, Mr Thomas Nicolfone, Aduocat, and Josephe Myller, Aduocat,'] thay wer presentlie called be thair names; and having accepted vpon thame the Defense of the *Lairdis of Auchindrane*, elder and younger, the Dittay wes oppinlie red in jugement: Aganis which *James Bannatyne* did not oppone any thing; bot declaired, that as he wald not vse any defence why this mater sould nocht pas to the knouledge of an Assyse; so when the

¹ Yea. ² Astonishment. ³ Sir John Preston of Fenton-barns, President of the Court of Session. ⁴ Sir Alexander Hay.

⁵ Sir John Cockburn of Ormiston. ⁶ Sir Alexander Drummond, an Extraordinary Lord of Session.

⁷ Sir William Levingston, an Extraordinary Lord of Session. ⁸ Sir Lewis Craig.

⁹ The MS. torn at this and the following places, which the Editor has supplied from conjecture, within brackets.

¹⁰ Counsel, or *Prelocutors*. ¹¹ Left blank. The names within brackets are taken from the Record.

Affyre could be chosen, he suld mak thair burding light, granting in thair presence so muche of the Dittay as concerned him, albeit he take God to witnes, that he wes the maist innocent of the thrie.

Thairefter M^{rs} Johne Ruffell and Thomas Nicolfoun, having expoued to my Lord Justice the groundis of the cause, the qualitie of the Defenderis meriting fauour and respect, the rigour vsed aganis thame in thair lang captinitie, and extraordinar Tortour of the young man, did craive, that thay might have the benefite of law, whilk allowed to the Defenderis citatioun vpoun fiftene dayes wairning; whairby, reffaving the Copie of the Summondis, containing the Inditement to the whilk thay wer to anfuere, thay might, be that space, be advysit of thair wyfe freindis and learned Counfall, to prepar thair juste Defenis. Whairvnto it wes answered, be his Maiesties Aduocat, that thair desyre could not be granted in this cause, be reasoun, the crymes whairof thay wer to be accused wer treasonabill; in which caise, ane prisoner, being broght from his Maiesties prision to the bar, wes, be the ordour of this Judgement,¹ put to present Tryall, without any delay or continewation; whilk, with no reasouns, could be granted to thame at this tyme; becaus, thrie yeiris ago, thay had bene summoned for the same crymes, vpon xv dayes wairning; at whilk tyme, they going to the horne, for thair contumacie, the Auld Laird wes takin be his Maiesties Commission, the Young Laird relaxing his [Summondis and entering] had bene deteaned be his Maiesties direction; so that they had not onlie fyvetene dayes, bot full thrie yeires to prepaire thair defenis.

The Defenderis than alledged, that the summonds, produced be the Lord Aduocat, could not justlie seclude thame of thair desyre of delay, becaus the Dittay this day produced be him, wes so different from the tenour of the ould Letteris, in many substantiall heidis, and did so aggravat the cryme, be many circumstances, nowayes mentioned in the former Letteris, that it wes easie to my Lord Justice and the Lord Assessoris to discern, that no thing conteaned in the former Letteris, could have gotin thame information to prepaire thair Defenses aganis the tenour of the Dittay now layd to thair charge. Which, being considered be the Lord Justice and Assessoris, and the auld Letteris and present Dittay exactlie conferred;² be Interlocutour, thay ordained present proces, refusing to give the Defenderis any vther copie of the Dittay, or delay of proces, till the nixt day.³

II. PROCEEDINGS BEFORE THE PRIVY COUNCIL OF SCOTLAND, *in reference to the Feuds and Conflicts recorded in the preceding Trial, &c.*

(i.) WARRANT of Privy Council, (*Apud Edinburgh, Decimo tercio Decembris, 1601,*) commanding the Earl of Cassillis to set Mure of Auchindrane and others at liberty.

FORSAMEKILL as it is vnderstand to the Lordis of Secrete Counfall, that at the lait CONFLICT and Combat, quhilk hapnit and fell out betuix JOHNNE ERLE OF CASSILLIS, and certane his freindis, on the ane pairt; and GILBERT KENNEDY OF BARGANY, and certane his freindis, on the vther pairt, vpoun the elleviut day of December instant; the said Erle tuik and apprehendit MURE OF AUCHINDRANE, DAVID KENNEDY of *Maxwelfoun*, and certane vthers of the said Laird of Auchindrane and Barganyis seruandis; and presentlie hes thame in his custodie and keeping: And in respect of the Slauchter and bluid quhilk hapnit and fell out at the said Conflict, it is verie suspicious that the said personis could be sufferit to remane in the powar and handis of the said Erle. THAIRFOIR, the saidis Lordis Ordanis Letteris to be direct, chargeing the said Erle of Cassillis to desist and ceis fra all proceeding aganis the personis foirsaidis, tane and apprehendit be him at the said Conflict, be vertew of his office of Bailserie, or of ony powar or commissioun grantit to him for that effect; dischairging him

¹ The practice of this Tribunal.

² Collated; compared with each other.

³ Here the Narrative ends abruptly. As the Report of the Trial is so full, it is likely that the writer had abandoned his original intention of giving a report of the proceedings which took place at the Trial—but merely to resume his Narrative, and continue it down to the period of their execution. This, however, if ever completed, has unfortunately been kept out of the scrolls. An account of the subsequent conduct of these atrocious criminals between the period of their condemnation and execution, must have possessed great interest.

thairof and of his office in that pairt : As alsua, chairgeing the said Erle to caus fett the said *Laird of Auchindrane* and *David Kennedy of Maxwelftoun*, and all vtheris perfonis tane be him at the said Conflict, at frie libertie, within the toun of Air, without ony violence or harme to be maid to thame be the way, within tuentie four houris nixt efter the chairge ; vnder the pane of rebellious, &c. And, gif he failzie, &c., to denunce him rebell, &c.

(ii.) WARRANT of *Privy Council*, (*Apud Halyruidhous, quarto Februarij, 1607.*) to denounce JOHN MURE of *Auchindrane* and others.

SEDERUNT.

Lennox,	Fyvie,	Lowdown,	Kinlofs,	Previe feill,	Kilfyth,
Chancellor,	Vchiltrie,	Maifter of El-	Haliruidhous,	Aduocat,	Tracquair,
Angus,	Newbottle,	phingftoun,	Thefaurar,	Collectour,	Brunt-Iland,
Mar,	Spynie,	Rofs,	Comptrollar,	Clericus Registri,	Sir Patrik Mur-
Wyntoun,	Roxburgh,	Dunkeld,	Justice-Clerk,	Elimofinar,	ray.

ANENT oure fouerane lordis Letteris, raifed at the instance of Sir George Home of Spott, knyght, his Maiefties Thefaurer, and Mr Thomas Hammiltoun of Drumcaine, his Maiefties Aduocat, for his hienes enterefe ; makand mentioun : That quhair, vpoun the ellevint day of December instant, *JOHNE MURE of Auchindrane*, Thomas Kennedy of Drummurchy, Hew Kennedy of Bennan, Walter Mure of Cloncard, Hector Kennedy in Bargany, Johne M^aalexander in Auchingregane, Thomas M^aalexander his broder, James Bannatyne in Chapeldonane, Johne Cathcart of Cartoun, Johne Cathcart 5ounger of Cartoun, Johnne Eccles of Kildonane, Williame Irwing, Thomas Wallace feruitour to the Laird of Bargany, Johne M^aalexander of Dalreoch, Thomas Dalrumpill brother to the Laird of Stair, Gilbert Kennedy in Pynmaehir, Gilbert Ramsay feruitour to the Laird of Bargany, Mofes Lokhart brother to the Laird of Bar, David Kennedy in Maxvelstone, Alexander Kennedy fone to Hew Kennedy in Craigneill, Robert Kennedy feruitour to Walter Mure of Cloncard, Mairtene Wilfoun in Newark, Robert Campbell in Carnychell, Williame Cauldwelle of Lochirmofs, Williame Kennedy in Garfer, Johne Mure of Craigkeane, Johne Mure in Quhytleys, Robert Wallace of Holmiftoun, George Angus notar in Air, Symone Gilmour thair, Peter Hammiltoun thair, Andro Kennedy thair, Henry Dalrumpill thair, Hew Kennedy thair, James Blair thair, Johne Blair thair, George Dumbar thair, George M^aalmont thair, James Dumbar thair, and . . . Kennedy cowpar thair, with convocatioun of his hienes leigeis, to the nowmer of . . . perfonis ; all bodin in feir of weir, with jakis, corflettis, fecrettis, lancis, and vtheris waponis, *inuaſiue*, and with muſcattis, hacquebuttis, and piſtolettis, prohibit to be worne be the lawis of this realme, Actis of Parliament and Secrete Counfall, come furth of the burgh of Air, towardis the toun of Mayboill, refoluit and difpoſit to haue attemptit ſome heich interpryſe aganis *JOHNE ERLE OF CASSILLIS*, in cais thay had found him vpoun the feildis : *LYKES AS*, thay perfaving the ſaid Erle and ſome of his frendis and ſervandis to be vpoun the feildis, befyd the toun of Mayboill, thay immediatlie ſet vpoun thame, ſchot and diſchairgit a nowmer of muſcattis, hacquebuttis and piſtolettis amang thame, quhairwith thay flew vmq^{le} . . . Spence, maifter of houſhold to the ſaid Erle, and hurt and woundit ſindrie vtheris of his ſervandis : Quhairthrow, as thay haue convocat his hienes leigis in armes, without powar or commiſſioun, ſua haue thay violat his hienes lawis and Actis of Parliament, maid aganis the beiring and weiring of hacquebuttis and piſtolettis ; and with that, thay haue brokin his hienes peace, to the diſturbance and ſchaikin lowſe of the hail eſtate of that cuntrey, without remeid be prouydit. AND anent the chairge gevin to the ſaidis *JOHNE MURE OF AUCHINDRANE*, &c. to haue compeirit perſonallie, befor the Kingis Maieſtie and Lordis of Secrete Counfall, at ane certane day bigane, to haue anſuerit to the premiſſes, and to haue vnderlyne ſic ordour as ſould haue bene tane thairanent ; as alsua, tuicheing the obſeruatioun of his hienes peace and keiping of guid reull and quyetnes in the cuntrey, vnder the paine of rebellious and putting of thame to the horne : With certificatioun to thame, and (*if*) thay failzeit, Letteris ſould be direct *ſimpliciter* to put

thame thairto : Lyke as at mair lenth is contenit in the said Letteris, executionis and indorfationis thair-of. Quhillkis being callit, and the saidis Perfewaris compeirand personallie, and the saidis Johne Mure of Auchindrane, &c. being oftymes callit and not compeirand, The Lordis of Secrete Counfall thairfoir Ordains Letteris to be direct, to denunce thame rebellis, and put thame to the horne, and to efcheit.

(iii.) DECRET OF ABSOLVITOR, (*Apud Haliruidhous, quinto Februarij, 1602,*) *by the Privy Council, in favor of JOHN EARL OF CASSILLIS and others, 'for convocatioun of his hienes lieges, and beiring and weiring of hacquebuttis and pistolettis, breking of his hienes peace.'*

SEDERUNT.

Chancellor,	Fyvie,	Blantyre,	Secretar,	Prevey feill,	Kilfyth,
Ergyll,	Lowdown,	Haliruidhous,	Comptrollar,	Aduocat,	Sir Patrik Murray,
Angus,	Roxburgh,	Thesaurar,	Collectour,	Tracquir,	Elimofinar.

ANENT oure fouerane lordis Letteris, raised at the instauce of Sir George Home of Spot, knycht, hie hienes thesaurer, and Mr Thomas Hammiltoun of Drumcairne, his Maiesteis Aduocat, for his hienes interesse; makand mentionn: That quhair, vpoun the elleuint day of December instant, JOHNNE ERLE OF CASSILLIS, Johne Corrie of Kelwod, Hew Kennedy of Penquhirry, Johne Davidfoun of Pennyglen, Oliver Baird of Culleingie, Patrik Mcilveane elder of Gremmat, Johne Mcilveane 3ounger of Gremmat, Hew Kennedy of Garryhorne, vtherwayis callit *the Guidman of the Ballot*, George Fergusoun of Thraif, Alexander Schaw tutour of Gremmat, Johne Mure of Wodland, Johne Mure of Kingmarloch, Johne Dik of Barbesburie,¹ Hew Kennedy of Dangar, Anthone Kennedy 3ounger of Barfalloch, Johne Mure merchant in Mynyboill (Maybole), Quintene Crawford 3ounger of Silliholl, Johne Kennedy of Smetoun, Williame Kennedy of Turneberry, Johne Campbell in Barnefurd, Johne Smyth 3ounger in Caffillis, Johne Calderwode in Girmerstoun, Johne Fultoun in Giltryhill, Johne Fultoun in Mosend, Alexander Baxter porter, Williame Harlaw hagbutter, Robert Fultoun in Giltryhill, Johne Fultoun in Bargennoch, David Fultoun his brother, Thomas Fultoun in Giltrie, Thomas Wode in Caffillis, Quintene Tod in Caffillis, James Davidfoun in Burnemoith, Johne Davidfoun his sone, Johne Mcolme in Mcolmestoun, Johne Malcome in Blairbouy, Johne Bell in Mcolmestoun, Thomas Mortoun in Caffillis, Johne Mortoun his broder thair, Johne Mcary thair, Johne Smyth in Dalruple-holme, Williame Hunter thair, James Corry in Bray of Dalruple, David Mcquhorta in Batlewand, William Campbell in Bra thair, Robert Cunynghame in Bateifoun, Johne Smyth in Drumgoblis, &c.² all men, tenmentis, servandis, and proper dependaris vpoun the said Erle, with convocatioun of his Maiesteis leigeis, to the nowmer of hundreth personis, all bodin in feir of weir, with jakis, steil-bonnettis, corflettis, lancis, and vtheris waponis invafue, and with hacquebuttis and pistolettis, prohibite to be worne be the lawis of this realme and Actis of Parliament; come in hostile and weirlyk maner furth of the toun of Mayboill, and lay at await for vmq^{le} GILBERT KENNEDY of *Bargany*, his freindis and servandis, as thay wer comeing the hie way fra the burgh of Air towardis the said Lairdis awne duelling hous, and invadit and perfewit thame of thair lyffis, schot and dischairgit a nowmer of hacquebuttis and pistolettis at thame, quhairwith findrie of the said Laird of Barganyis cumpany wer hurt and woundit; and at that same tyme, thay schamefullie, cruellie, and vnmercifullie *flew the said vmq^{le} Gilbert Kennedy of Bargany*: QUIAIRTHROW, as thay haue convocat his hienes liegeis in airmes, without ony lauchfull Warrant or authoritie, sua haue thay violat his hienes lawis and Actis of Parliament maid aganis the beiring and weiring of hacquebuttis and pistolettis, and with that, thay haue brokin and dissoluit his hienes peace in that cuntrey; quhairby mony inconvenientis are lyke to fall out, to the trouble and disquyeting of the haill cuntrey, without remeid be provydit. AND anent the charge gevin to the saidis Johne Erle of Caffillis, *Capitane Johne Forrester*,

¹ Barbestoun. ² A List of one hundred and thirty more names follows. They are unnecessary to be inserted here, though they might no doubt be of some local interest. None of them are persons of rank.

Mr Cristopher Cokburne, Quintene Craufurd, Patrik Reidpeth, Williame Maitland, Williame Fleming, Alexander Forbes, household-men to the said Erle, Anthon Kennedy younger of Balfcheroch, Arthour Kennedy his brother, Mr Williame Boyd, Andro Cuninghame, Daid Girvan, Thomas Kennedy, Daid Cathcart, Alexander Baxter, Williame Harlaw, Daid Craufurd, Daid Gray, John Blair, alsua his householdmen and servandis, John Corrie of Kelwode, Hew Kennedy of Penquhirry,¹ &c. to haue compeirit personallie: As alsua anent the chairge gevin to the said Erle of Caffillis, to haue enterit and presentit the personis particularlie aboue writtin befor the Kingis Maiestie and Lordis of Secreit Counfall at ane certane day bigane, to haue answert to the premisses, and to haue vnderlyne sic ordour as sould haue bene tane thairanent; as alsua, tuicheing the obseruatioun of his hienes peace and keiping of guid ruell and quyetnes in the cuntrey, heirefter, vnder the paine of rebelloun and putting of thame to the horne, with certificatioun to thame and² thay sailzeit, Letteris sould be direct *simpliciter* to put thame thairto; lyk as at mair lenth is contenit in the saidis Letteris, executionis, and indorfationis thairof. *QUHILKIS* being callit, and the saidis persewaris compeirand personallie, and the said *John Erle of Caffillis* being lykwayis personallie present, for him self, and in name of the remanent defendaris foirfaidis; quha producit tua Commissionis, subscryuit be his Maiestie, and past his hienes Register and Signet: The ane aganis *Blairquhane younger*,³ Girvenmanis, Hew Kennedy of Bennan, Thomas his brother, and Walter Mure of Cloncard, quhais names ar insert in the said Commission with his Maiesteis awne hand, knowing thair misdeidis, geving powar to the said Erle of Caffillis to convocat his hienes liegeis, and to searche, seik, tak, apprehend and persew, *with fyre and sword*, the personis aboue writtin, and to weir hacquebuttis and pistolettis to that effect; as the said Commission, of the dait the nynt day of Julij, the 5eir of God Im.Vjc. and ane 5eiris, at lenth beiris: And the vther Commission, direct to the said Erle, for the persute, taking, and apprehending of *Robert Gordoun of Barnerino*, Alexander Gordoun of the Hillis, Williame Mcneilie, Alexander McKie of Balfair, and Thomas Kennedy of Drummurchy, as suspect guilty of Murthour, Oppressioun, and Refsett of Thift; as in the said Commission, geving powar to the said Erle to convocat his hienes liegeis, assiege houffis, raise fyre, and persew the saidis personis with all extremitie, and beiring dait the tuentie-ane day of July Im.Vjc. and ane, at lenth is contenit: Be vertew of the quhilkis Commissionis, the said Erle allegit, that he had lauchfullie proceedit in the hail actioun aboue writtin, quhairvpoun he wes accuset, seing the said *Thomas Kennedy of Drummurchy* and the said *Walter Mure of Cloncard*, and dyuerse vtheris his Maiesteis rebellis, vpone quhome the said Erle presentlie producit Horning deulie execute and registrat, and quha standis 3it at the horne vnrelaxt, wer present and vpoun the grund with the said vmql^e *Gilbert Kennedy of Bargany*, the tyme foirfaid; and the said Erle, being in executioun of his Maiesteis Commissionis, in searching and seiking of the said Thomas, and of the remanent personis thairin contenit, all that fell out in that mater wer lauchfull. *QUHAIRUNTO* it wes answert be the said Mr Thomas Hammiltoun, that the said first Commission can be na Warrant nor authoritie to the said Erle; becaus that lang befor the committing of the crymes aboue writtin, quhairvpoun he is now accusit, the same Commission wes dischairgit be his Maiestie, for the hail personis thairin contenit, except Young Blairquhane; and lauchfull intimatioun and publication wes maid to the said Erle of the said dischairge, lang befor the said tyme, viz. in the moneth of August lastbypast; quhilk the said Adnocat referrit to the said Erles aith: And sua, in respect of that dischairge, and that the said Laird of Blairquhane Younger wes not in cumpany with the said Laird of Bargany the tyme foirfaid, the same Commission can be na Warrant to the said Erle: And as to the last Commission, it was answert be the said Aduocat, that the same can be na sufficient Warrant to the said Erle; because the same Commission wes not deulie registrat aganis the said Thomas Kennedy of Drummurchy, bot his name insert thairin, lang efter the same wes past the Register

¹ Here the remainder of the names are repeated.² If.³ Blairquhan.

and Signet: And thair was na powar nor licence contenit in the said last Commissioun for beiring and weiring of hacquebuttis and pistolettis; and seing his Maiesteis Register is the reull be the quhilk the said Commissioun sould have been directit, the same can be na Warrant to the said Erle: Vnto the quhilk it wes replyt be the said Erle, that, albeit the first Commissioun wes dischairegit aganis the bail perfonis contenit thairin, except *Young Blaquhane*, zit it stude, in full force and effect aganis him; and he being his Maiesteis rebell, and continewing disobedient to his Maiestie, and being a ordinary hantar and keipar of cumpany with the said Laird of Bargany, oftymes ofbefoir and senfyne, and suspectit to haue bene with him that day, he had gude Warrant and powar to searche him qubaireuer he mycht get knowlege of his being: And as to the said last Commissioun, it wes replyt be the said Erle that he had a special Warrant and directioun fra his Maiestie, to the Keipar of the Register, to register the said Commissioun, as it wes productit to the Register; quhilk Warrant he productit befoir the saidis Lordis; fra that it was lauchfull to him to insert ony names thairin, quha wer rebellis, or guilty of sic crymes, in his plefour: And albeit thair wes na mentioun maid in the last Commissioun of hacquebuttis and pistolettis, zit, in respect of the first Commissioun standing vndischarget, as said is, and that the last Commissioun gais him powar to vse all weirlyk ingyne quhilk he could deuyse for apprehensioun of the perfonis thairin contenit, the executioun of the same, in forme and maner as it fell out, was lauchfull: And forder, it wes replyt be the said Erle, that he being the ordinar Judge and Magistrat of the cuntrey, and not a privat persone, thair sould na sic dischARGE haue bene purchest quhill¹ first he had bene wairnit to the geving thair of, and that the perfonis, in quhais fauour the same wes grantit, had gevin thair obedience to his Maiestie, and purgit thame selfis of the Horningis quhilkis thay vnderlay. WITH the quhilkis Anfueris and Replyis, and dyuerse vtheris the reffonis and allegatiounis of baith the saidis parteis, the Lordis of Secrete Counfell being weil and ryplie advysed,—THE LORDIS of Secrete Counfall FINDIS and DECLAIRIS the tua Commissionis aboue written, productit be the said Erle, to be guid, valid, and sufficient; and that thairby he had gude powar and autoritie to searche and feik the saidis perfonis, and vse the same Commissionis. AND thairfoir the saidis Lordis Affoizis² *simpliciter* the saidis Defenderis fra that pairt of the saidis Letteris, tuicheing the convocation of his hienes liegeis, and beireing and weiring of hacquebuttis and pistolettis, and breking of his hienes peace: And Decernis thame quyte thairfra in all tyme comeing, and of all offence (that) may be impute to him in the vsing of the saidis Commissionis.

(iv.) ACT of Privy Council, *The Laird of Cullane against Williame McPhadrik*.³

ANENT our souerane lordis Letteris, reasit at the instance of JAMES KENNEDY of *Culzeane*, making and mentioun: That quhair, albeit his Maiestie, be the space of aucht yeiris syne, maid and set furth diuerse edictis and Proclamatiounis, prohibiting and discharging all his heyneis leigeis, that name of thame sould reffet, supplie, nor intercommoun with *Thomas Kennedy*, *Thomas McAlexander*, *Thomas Wallace*, and *William Irving*, during the tyme of thair rebellious and remaneing at the horne, for the odious, cruell, and detestable Murthour of vmq^{le} Sir Thomas Kennedy of *Culzeane*, father to the said complenair, committit be thame, in maner specifeit in the said Proclamatioun, vnder certane panes mentionat thairintill. Nochtwithstanding, it is of treuth, that *William McPhedrice*, servitour to the Laird of *Girvanmanis*, hes continewallie, and almaist ilk day sen the dait of the said Proclamatioun, aganis the tennour of the same, reffett, suppleit, and intercommonit with the said *Thomas McAlexander*, and remanent rebellis abouenameit, within his awin duelling house in *Air*; hes keipit mony tryftis and meitingis with him, as namelie, vpoun the xxvj Junij, Im.Vj. and aucht yeiris, the said *Thomas McAlexander* being in his dwelling hous in *Air*; and informatioun thair of being maid to *JOHNE ERLI OF CASSILLIS* and the said Complenaire, and thay haueing warrand, power, and commissioun for the persute of the said *Thomas McAlexander*, and being than vpoun the feildis agaitward⁴ towards him, it is

¹ Until.

² Absolves; acquits.

³ *Regist. Secr. Conc. (Acta)*, Aug. 3, 1609.

⁴ On the road or gait to

apprehend him,

of treuth that the said William M^cPhedrice, being vpoun the knowlege and counfall of the said Erll and the said Complenaris said purpois aganis the said Thomas, he lap on horfe and convoyit him self fecritelie away to the said hous, quhair the said Thomas wes for the tyme, and thair intercommvnit with him, reveillit, and diselosit vnto him the said purpois and plat layd down for his perfute: And that he mycht the more saufly eschew, the said William M^cPhedrice horfit him on his awin horfe, and pat him away; in heich and proud contempt of his Maiesteis auctoritie and lawis. For the quhilk the said William aucht to be perfewit and pynist in his persone and guidis, to the terrour of vtheris to commit the lyke heirafter. And anent the chairge gevin to the said William M^cPhedrice to haue compeirit personalie before the Lordis of Secrite Counfall this present thrid day of August instant, to haue anfuert to this complaint, and to haue hard and sene sic ordour tane thairanent, as appertenit; vnder the pane of rebellion and puting of him to the horne: with certificatioun to him and¹ he failzet, Letteris sould be direct *simpliciter* to put him thairto; lyke as at mair lenth is contenit in the saidis Letteris, executionis, and indorfationis thairof; quhilkis being callit, and the said perfewar compeirand personalie, and the said Defender being oftymes callit, and not compeirand, The Lordis of Secrite Counfall thairfor Ordanis Letteris to be direct to Officearis of airmes, schireffis in that pairt, chargeing thame to pas and denunce the said William M^cPhedrice his Maiesteis rebell, and to put him to the horne; and to eschete, &c.

(v.) ACT of Privy Council, *The Kingis Aduocat against Johnne Mure.*²

ANENT our fouerane lordis letteris, reasit at the instance of Sir Thomas Hammiltoun of Bynnie, knycht, aduocat to our fouerane lord, for his hienes interesse, makand mentioun: That quhair the cruell, unworthie, and detestabill Murthour of vmq^{le} SIR THOMAS KENNEDY of *Culzeane*, knycht, and of vmq^{le} WILLIAME DALRUMPLE, sone to Williame Dalruple in Aire, haueing thir mony zeiris bigane lyne obscure and hid, and no perfyte discouerie nor knowledge being had of these who wer the cheiff and principall divifaris, practizaris, and conspiratouris in the same Murthour, the said Aduocat is now informed that the personis following, thay ar to say, JOHNNE MURE, cook in Auchindrane, *Thomas Wallace*, feruitour to Auchindrane, *Andro M^cAlexander*, sometyme feruitour to *James Bellindane*³ in Chapildonane, *James M^ccaig*, sone to Adam M^ccaig, in Girvane, and *George Small*, in Plesance, doeth knaw something in that mater, and can gif some licht, evidence, and probable presumption and circumstanceis, for cleiring of the same: Quhairfore, necessar it is, that thay be examinat heirvpone, in presence of the Lordis of his heynes Preney Counfall. AND anent the charge gevin to the saidis Johnne Mure, cook, Thomas Wallace, Andro M^cAlexander, James M^ccaig, and George Small, in Plesance, to haue compeirit personalie, befor the Lordis of Secrite Counfall, this present xx day of Junij instant, to haue anfuert to fuche thingis as sould have bene speirit at thame tuitching the Murthour of the personis foirfaidis, vnder the pane of rebelloun and puting of thame to the horne; with certificatioun, &c. The Lordis ordanis Letteris to be direct, &c., chargeing to pas and denunce the said personis, who compeirit not, his Maiesteis rebellis, and put thame to the horne; and to eschete, &c.⁴

(vi.) SUSPENSIOUN, *James Bannatyne, in Chapeldonall.*⁵

ANENT oure fouerane lordis Letteris, reasit at the instance of *James Bannatyne in Chapeldonall*, makand mentioun, That quhair as, he is informed he is denuncit rebell and put to the horne, be virtew of Letteris, reasit at the instance of *Johnne Erll of Cassillis* and Sir Thomas Hammiltoun of Bynnie, knyht, his Maiesteis Aduocat for his heynes interesse, ffor the complenair his allegeit not compeiring personallie before the Lordis of Secrite Counfall, at ane certain day bygane, to haue anfuert to ane complaint maid be the said Erll and Lord Aduocat vpoun him, tuicheing his allegit beiring and weiring of

¹ An, if. ² Reg. Secr. Conc. (Acta), Jun. 20, 1611. ³ Bannatyne. At this period the name Bannatyne was indifferently spelt, Ballendyne, Bellenden, Bannatyne, and Ballantyne. ⁴ A similar entry occurs, of the same date, to denounce 'THOMAS MURE, sone to (Johnne) Mure of Auchindrane, and ANDRO SISCLAR, halff-brother to the Laird of Auchindrane, for not appearing to answer at ane certane day bygane.' ⁵ Regist. Secr. Conc. (Acta), Sep. 27, 1611.

hagbuttis and pistolettis, and invaiding and perfewing of *Hew Kennedy of Garrihorne* and *Thomas Mcquhary*, boith feruitouris to the said Erll, and schooting and dischairing of pistolettis at thame, &c. The Lords suspended the said Letters, *simpliciter*, on the ground of Bannatyne's not having been cited to appear, &c.

III. PROCEEDINGS IN PARLIAMENT, *as to the Forfeiture of Thomas Kennedy of Drummurchie, for the Burning of Auchinsoull,—Murder of Sir Thomas Kennedy, &c.*

(i.) *The Forfaltrie of Thomas Kennedie.*

Apr. 26, 1604.—SIR Thomas Hamilton, King's Advocate, took instruments of the Production of the Summons of Treason and executions, &c. in Parliament.¹

Jul. 11, 1604.—The Summons and other documents were again produced in Parliament,² which were of new verified in presence of the Lord Commissioner, (John Earl of Montrose,) and haill Estaittis: And siclyk, the said Aduocat producit Lettres of Relaxatioun, relaxand the said *Thomas Kennedie* frome all proces of Horning led and deducet aganis him, for quhatfumeur cause. And thaireftir, the said *Thomas Kennedie* being thryse callit at the tolbuith windo, to haue answerit to the said Summondis of Treassoun, he comperit nocht to anfuier thairto, and thairfoir the said Aduocat (estir that the foirfaid caus of the said Summondis of Treassoun wes fundin relevant be the saidis haill Estaittis aganis the said Thomas Kennedie of Drummurchie) ffor preving of the pointis of the said Summondis of Treassoun aganis the said Thomas Kennedie, and of the reissoun and caus contenit thairin, repetit the Depositiones of the Witneses reffautit, admittit, sworne, and examinat in presens of the saidis haill Estaittis vpoun the foirfaid reffone and cause; and als repetit the notorietie of the fact of the Burning, and the said Thomas Kennedie acknowlegeing his awin giltines, and taking of the saidis crymes vpoun him, throw being fugitive and denuncit Rebelle for nocht comperance befor our said souerane lordis Justice and Lordis of his hienes Privie Counfall *respectiue*, in maner contenit in the Lettres of Horning raist thairvpoun: And lykwayis, the said Aduocat producit diuerse vtheris wryttis and probatiounes, for preving of the said Summondis of Treassoun, and desyrit the saidis Estaittis of Parliament to advyse the foirfaidis probatiounes, and to gif furth thair Dome and Sentence thairintill, according to justice. And thaireftir, the foirfaidis haill probationis and Summondis of Treassoun being red, hard, sene and considerit be the saidis Estaittis, and they thairwith being ryplie advyfit, the saidis haill Estaittis of Parliament FINDIS, Decernis, and Declaris that the said Thomas Kennedie of Drummurchie hes committit TREASSOUN, in Raifing of the said Fyre, and Burning of the said Place of AUCHINSOULL, in maner speceifeit in the foirfaid Summondis: AND thairfoir, Decernis and Ordanis THE DOME vnderwritin to be pronuncit and gevin furth aganis him, be the mouth of David Lyndefay, dempster: Off the quhilk Dome, the tennour followis.

DOME. This Courte of Parliament schawes for Law, that the said THOMAS KENNEDIE of Drummurchie hes committit Treassoun in Raifing of Fyre and Burning of the said Place of Auchinsoull, pertenyng to the said Duncane Craufurde, the tyme and in maner speceifeit in the said Summondis of Treassoun, perfewit be his hienes said Aduocat, for his grace entres, aganis him: And thairfoir Findis and Declaris, That the said THOMAS KENNEDIE hes amittit, and tynt, and Foirfaltit for euir, all his landis, heretages, rowmes, possessionis, gudis, and geir quhatfumeur, belonging to him ony maner of way, and quhilkis he hes, had, nicht haue, or clame, within this Realme of Scotland: And Decernis the samin to haue appertenit and to appertene to our said souerane lord, to be confiscat, and to remane with his hienes, as his propertie, in all tyme cumming. And als Findis and Declaris, that the said THOMAS KENNEDIE hes amittit and tynt his fame, honouris, and dignitie: And he to be pvnisht as ane Tratour, conforme to the Lawes of this realme. And this I gif for Dome.

¹ *Acta Parl.* iv. 260.

² *Acta Parl.* iv. 267.

(ii.) THE SUMMONDIS OF TRESSOUN *of vmq^{le} WALTER MURE OF CLONCARDE, p^{ys}t fra simpliciter be our fouerane Lordis Aduocat.*¹

Jul. 11, 1604.—THE quhilk day Maister Thomas Rollok, depute for Sir Thomas Hammyltoun of Monkland, knycht, Aduocat to our fouerane Lord, and in his hienes name reproducit, in prefens of ane nobill and potent lord, Johne Erle of Montrose, Lord Grahame and Mukdok, Great Commissionar of this present Parliament, and in prefens of the haill Estaittis thair of, the Summondis of Treassoun vnderwritin; quhilkis wer producit be the said Aduocat, ofbefoir, at Edinburgh, in prefens of the Lordis of Articlis, vpon the tuentie aucht day of Aprile last bipast: Off the quhilk Summondis of Treassoun the tennour followes.²

[SUMMONS OF TREASON *against Thomas Kennedy of Drummurchie and Walter Mure of Cloncarde.*³]

JACOBUS, Dei Gracia Rex Anglorum, Scotorum, Gallorum et Hibernorum, &c. Fideique defensor: Dilectis nostris Leoni Regi Armorum, Albanie, Snawdoun, Merchemont, Rothefay, Ilay, Rofs, Bute, Carrik, Ormond, Vnicorne, signiferis; David Bryfoun, Robert Stewart, Alexandro Dowglas et Jacobo Chalmeris clauigeris nostris; necnon Joanni Fergusfoun et Joanni Wilkesfoun nuncijs, et eorum cuilibet, coniunctum et diuisim. Vobis precipimus et mandamus quatenus legitime summoneatis THOMAM KENNEDIE *de Drummurchie*, fratrem germanum quondam Gilberti Kennedie de Barganie, personaliter, si ejus personalem presentiam habere poteritis, seu aliter apud locum sui domicilij et habitationis; ac etiam apud cruces forales burgorum nostrorum de Air, Irving, Mayboll ac apud portus nostros de Air et Leith, et alia loca necessaria, super premonitione sexaginta dierum, eo quod dictus Thomas de presenti extra regnum nostrum Scotie morari dicitur. Necnon summoneatis legitime ROBERTUM MURE, fratrem germanum et heredem apparentem quondam *Walteri Mure de Cloncarde*, JOANETAM MURE eius sororem germanam, personaliter, si eorum personalem presentiam habere poteritis, vel secus apud locum suorum domiciliorum et habitationis; ac etiam dictos Robertum et Jonetam aliofque agnatos et cognatos dictj quondam Walterj Mure de Cloncard, omnesque alios interesse habentes vel habere pretendentes, necnon Tutores et Curatores dictorum Robertj et Jonete Mures, si quos habent, apud dictos cruces forales dictorum burgorum nostrorum de Air, Irving, Mayboll, et alia loca necessaria, quod compareant coram nobis et nostris Commissionarijs et Locum tenentibus, necnon coram Regni nostri Scotie Ordinibus, Edinburgi, vicesimo die mensis Aprilis proxime futuri, in Parlamento nostro incipiendo decimo die dicti mensis, hora causerum, cum continuatione dierum: ad respondendum nobis, necnon ad instantiam dilecti et fidelis nostri consiliarij Domini Thome Hammyltoun de Monkland, militis, nostri Aduocatj, pro nostro interesse, dictum viz. THOMAM KENNEDIE *de Drummurchie*, pro sua nefaria, scelesti, facinorosa, et proditoria Occisione et Interemptione quondam Thome Kennedie de Coiff militis⁴ per se suos complices et confortes secum conspiratores in dicto Homicidio, per summum nefas vt sequitur, perpetrato, vndecimo die mensis Majj, anno domini 1602: NECNON pro suo scelesti, nefario, et manifesto Furto, cum violenta rapina coniuncto, vulgariter vocat. *Stuth-reiff*; marsupij seu crumene dicti quondam Thome Kennedie de Coiff militis, cum magna pecunie summa auro et argento signato, summam duorum millium mercarum extenden. quam dictus quondam Thomas cum eo portabat; cum varijs annulis aureis, gemmatis et alijs, ac multis fibulis aureis diploidi tunice et femoralibus dicti quondam Thome confutis, ad valorem mille librarum extenden. in ipso actu Homicidij perpetrat.: NECNON pro sua proditoria et nefaria Obsidione, per se et suos complices, ad numerum quinquaginta virorum armatorum, Mansionis et Maneriei terrarum de AUCHINSOULL, jacen. infra vicecomitatum nostrum de Air; ad quod, per occasionem subscriptam, dilecta consanguinea nostra JEANNA COMITISSA DE CASSELLIS, comitata septem vel octo seruis ac comitibus confugerat, salutis sue causa, cum dicta Domina Jeanna et eius serui iter

¹ *Acta Parl.* IV. 271.

² Here the Summons which has already been given is inserted.

³ To prevent

repetition, this Summons (which is a transcript of the other against Drummurchie, with the additions relating to Cloncard) has been preferred.

⁴ A mistake for Cassilis. However, Sir Thomas was often so designed.

facerent a domicilio suo de INCHE in Gallouidia, versus aliud suum domicilium in Villa de MAYBOLL, in balliati de Carrik et infra vicecomitatum nostrum de Air, decimo octauo die mensis Maij ultimo elapsi, 1603. Et pro maleuolo, crudeli, nefario, abhominabili, et scelesto Incendio Maneriej, in quod, causa euitandi periculi mortis, dicta Domina Jeanna Comitissa de Cassellis et serui sui confugerunt; e qua mansione et manerie de Auchinsoull, cum idem maneriem combustam essent vndique et conflagraret, metu mortis vehementia flammarum et fumi egredi coacti sunt, vbi post egressum dicte Domine Joanne Comitissæ de Cassellis quondam HUGO KENNEDIE, frater germanus et heres apparens dilecti nostri consanguinej Joannis Comitis de Cassellis, Domini Kennedie, Joannes Mcilveiane junior de Grwmnett, Joannes Dik de Barbastoun, Andreas Cunynghame in Knokdone, Quintinus Craufurde, Robertus Hay, Willielmus Kennedie, serui et comites dicte Comitissæ pro tempore, per dictum Thomam Kennedie de Drummurchie et suos complices captiui facti sunt, et vt infra dicitur abducti, et in privatis carceribus detenti. Et PROPTEREA, dictum Thomam ad videndum et audiendum se crimen Lese-Maiestatis per decretum et censuram nostri Parlamenti et regni Scotie Statuum incurrisse; et ideo, tanquam reum, Lese-Maiestatis puniri debere, capitali et ultimo supplicio; necnon amissione omnium bonorum suorum, mobilium et immobilium, terrarum et tenementorum, que dictus Thomas in regno nostro Scotie habet, habere, vel clamare poterit, in futurum. NECNON, dictos ROBERTUM MURE, fratrem germanum et heredem apparentem dicti quondam Walterij Mure de Cloncarde, et JONETAM MURE eius sororem germanam, omnesque alios cognatos et consanguineos dicti quondam Walteri, ac tutores et curatores dicti Roberti et Jonete, si quos habent, omnesque alios interesse habentes vel habere pretendentes, ad videndum et audiendum, per regni nostri Ordines in Parlamento nostro supradicto decerni et declarari, quod dictus quondam Walterus Mure de Cloncarde fuit et est reus Lese-Maiestatis, vt qui fuit actor, factor, et perpetrator dicti criminum cum dicto Thoma Kennedie de Drummurchie modo et forma quibus infra dicitur. PRO QUIBUS eiusdem quondam Walteri memoria et fama damnari et aboleri debet, ac eius omnia bona mobilia et immobilia, terre, tenementa, et omnia alia que habuit in regno nostro Scotie, vel habere potuit, ad nos pertinere decerni debeat; et quod ab eisdem dictus Robertus frater et Joneta eius soror, omnesque alij ab eo descendentes, debent excludi imperpetuum, propter rationes et causas subsequentes. PROPTEREA quod in Parlamento nostro tento apud burgum nostrum de Edinburgh, in Scotia, vicesimo nono die mensis Julij, anno domini 1587, per nos et tres dicti nostri regni Ordines statutum est, quod si contigerit aliquem subditorum nostrorum dicti regni Scotie, qui habet terras sibi hereditarie pertinentes, viz. vt vulgariter in dicto statuto dicitur *ony landit man*, fore legitime et secundum juris ordinem, aliquo tempore post dictum statutum futuro, de manifesto furto et vi rapine admisso, id est *Stouth-reiff* esse convictos, incurrent propterea crimen et penam Lese-Maiestatis, hoc est omissionem et forisfacturam vite, terrarum, et bonorum; prout in dicto statuto apertissime continetur. SED sic est in rei veritate, quod dictus THOMAS KENNEDIE de Drummurchie, et prefatus quondam WALTERUS MURE de Cloncarde, cum suis complicitibus et consortibus, numero septem, armis, machinis bellicis, et sclopis, prohibitis et lege vetitis, instructi, et equis insidentes, dicto duodecimo die mensis Maij 1602, existentes Rebelles et ad cornu nostrum positi, prout per Literas nostras et denunciationem rebellionis clare constare poterit; et ex precogitata feloniam dictum Thomam Kennedie de Coiff militem, imparatum et non-opinantem, ac iter facientem, vno seruo comitatum, a domicilio suo de Coiff versus dictum burgum nostrum de Air, ac inde profecturum Edinburgum negotiorum suorum gerendorum causa, apud Capellam Sanctj Leonardi nuncupat. dimidio miliaris a dicta Vrbe de Air distan. aggressi sunt, ac eundem invaserunt machinis bellicis ac lanceis transfixerunt et crudeliter occiderunt, et furto, rapina, et vi furtum comitante, id est le *Stouth-reiff*, ex marsupio et crumena dicti quondam Thome Kennedie de Coiff predictam summam bis mille marcarum in auro signato, lie *Rois-nobillis*, et *Fyve-pund-peices*, *Angell-nobillis*, et *Portingall-doucattis*, violenter furati sunt et abstulerunt, cum varijs annulis, gemmatis, ac alijs, et multis fibulis aureis diploidi tunice et femoralibus dicti quondam Thome confutis, ad valorem mille librarum extenden. Pro quoquidem crimine, coram Justiciario nostro vocati,

ut lege subirent, contumaces facti Rebelles declarati sunt, et ad cornu nostrum positi, prout per Literas nostras et denunciationem rebellionis satis clare constare poterit. AC ETIAM statutum est, per aliud actum Parliamenti illustrissime memorie quondam Jacobi V. Scotorum Regis, avi nostri, tenti et inchoati, apud Edinburgh, vicesimo secundo Januarij, anno 1538, quod si quis combuferit aliquos in domibus suis, reus Lese-Majestatis erit: Ac etiam, quod omnes Combustiones domorum vel granorum, et omnia Incendia voluntaria seu malitiosa, fiant crimina Lese-Majestatis; idque in odium Incendiariorum, quos leges propter criminis atrocitatem severius plecti jubent; sicut in eodem statuto plenius continetur: Quodquidem statutum in Parlamento nostro tento apud Edinburgh, quinto die mensis Decembris, anno domini 1567, repetitum et renovatum est, idque merito crescente in regno nostro Incendiariorum numero et audacia; prout in dicto statuto posteriori latius continetur: SED sic est, quod dictus THOMAS KENNEDIE de *Drummurchie* et dictus quondam WALTERUS MURE de *Cloncarde*, comitati circiter quinquaginta armatis equitibus, per insidias obsiderunt iter dicte dilecte consanguinee nostre JEANNE COMITISSE DE CASSELLIS, proficiscentis e domicilio de Inche in Gallovidia, in vicecomitatu nostro de Wigtoun, versus aliud domicilium suum in Villa de Mayboll et balliatu nostro de Carrik et vicecomitatu de Air, die xvij^o mensis Maij, anno domini 1603, et equis citatis in dictam dilectam nostram consanguineam, et eius seruos ac comites, impetum facientes, iter et viam publicam deferere, metu vite sue, compulerunt: Illa autem cum refvgii causa versus Mansionem quandam de AUCHINSOWLL, quam tum inhabitabat *Duncanus Crawfurde de Auchinsowll*, cum comitibus et seruis suis citatis equis accederet; qui locus, cum ad effugium commodus videtur, et viderunt ex eo loco dilectam consanguineam nostram seruos et comites eius nisi domo incensa extrahi non posse, illico illato igni domum et eius ambitum vndique incenderunt, e qua crescente fumo et irrumpentibus flammis, ad extremum periculum omnes redacti, in manus dictorum Latronum Incendiariorumque dilecta nostra consanguinea cum suis seruis et comitibus, deditione facta, captiui devenerunt; ex quibus vnus, nomine Joannes Mcgrane, flammis superatus predictam domum combustam egressus priusquam respirare potuerit, crudeliter et nefarie gladijs et machinis bellicis, a dictis Thoma et quondam Waltero et complicibus predictis crudeliter interfectus est: Ac reliqui comites dicte nostre consanguinee, viz. HUGO KENNEDY, frater germanus et heres apparens dicti dilecti nostri consanguinei et consiliarij Joannis domini de Cassellis, Joannes Mcilveyane junior de Grwmnett, Joannes Dik de Barbestoun, Andreas Cunynghame de Knokdone, Quintinus Craufurde, Robertus Hay, Willelmus Kennedy, per dictos Latrones, Predones, et Incendarios captiui facti sunt, et eorum arbitrio abducti, et per eos in domibus, fortalicijs, et Castris de Ardstinchell, et lie Coiff de Craignett, infra dictum vicecomitatum nostrum de Air, proditorie custoditi et detenti sunt, per dies quindecim, aut eo circiter; Nec ab illa captiuitate liberati et redempti fuerunt, donec per se et fidejussores suos obligarentur, quod dictum dilectum consanguineum nostrum Joannem Comitem de Cassellis, cui vt domino et hero suo seruire tenebantur, omnino defererent, et si fecus facerent, magnam pecunie summam soluturos se promitterent, compulsi etiam diris seipso deouere, si contra fecissent: IN quo, non solum Latrocinij, *Stuthreif*, Infidiationis viarum, ac proditorij Incendij crimine irritati sunt; sed etiam, proditorie Vsurpationis autoritatis nostre reos sese facerent. AC vt hec omnia notoria fiant, idem Thomas Kennedie de Drummurchie ac dictus quondam Walterus Mure de Cloncarde vocati coram Dominis Secreti Consilij nostri responsuri predicto proditorio crimini Incendij et Captionis dictarum liberarum personarum et liegiorum nostrorum et alijs supramentionatis, contumaces effecti sunt; Ac propterea etiam Rebelles nobis declarati et denunciati sunt; prout in Literis nostris, ea de re executioni mandatis, latius continetur. QUARE, dictus THOMAS KENNEDIE de *Drummurchie*, per Decretum et censuram Parliamenti nostri et regni nostri Ordinum crimen Lese-Majestatis incurrisse decerni; et ideo, tanquam reus Lese-Majestatis puniri debet capitali et vltimo supplicio, necnon amissione omnium bonorum suorum, mobilium et immobilium, terrarum, et tenementorum, que dictus Thomas in regno nostro Scotie habet, vel clamare et habere poterit in futurum; ac etiam per dictum nostrum Parlamentum et regni nostri Ordines decerni et

declarari debet, quod dictus quondam WALTERUS MURE de *Cloncarde* fuit et est reus dicti criminis, Lese-Majestatis, vt qui fuerit actor, factor, et perpetrator dicti. criminum respectiue supramentionat. cum dicto THOMA KENNEDY de Drummurchie, modo et forma antedict. ; pro quibus, etiam eiusdem quondam Walteri memoria et fama aboleri et damnari debent; ac etiam eius omnia bona, mobilia et immobilia, terre et tenementa, et omnia alia que habuit in regno nostro Scotie, vel habere vel clamare potuit, vel prefatus Robertus et Joneta agnati, cognati, consanguinei, et omnes ab eo discendentes, habere vel clamare potuerunt, in futurum, ad nos pertinere decerni debent, et ab eisdem dictus Robertus nunc frater germanus et dicta Joneta soror germana dicti quondam Walteri, et omnes alii ab eo discendentes, ascendentes, collaterales, et alii quicunque, excludi debent imperpetuum, propter rationes et causas suprascriptas; intimando supradictis personis, et eorum cuilibet, respectiue, quod siue dictis die et loco cum continuatione dierum comparuerint, siue non, nos, dictusque noster Iusticiarius in premissis, iusticia mediante, procedemus et procedet. INSUPER, citetis peremptorie, coram testibus, Alanum Cathcart de Drumjowan, Petrum Algeo seruum Magistri Jacobi Donaldson Aduocati, Dauidem Craufurde, Alexandrum Craufurde seruos Domini de Kerse, Duncanum Craufurde, Joannem Mure de Tarquyne,¹ Jacobum Martour in Knokdone, Gilbertum Mure de Auchinsoull, Gilbertum Kennedy de Monunsionn, Arthurum Kennedie filium Dauidis Kennedie de Balfcherocche, Joannem Wilsoun in Dalrumpill, Archibaldum Gellis coquum, Hugonem Kennedie de Garryhorne, Allanum Mair in Layne, Jacobum Gowdie in Lauderdale, Jacobum Mairtrout in Traboyak, ad comparandum coram nobis dictone nostro Iusticiario, dictis die et loco, cum continuatione dierum, ad perhibendum fidele testimonium in causa predicta, sub pena legis. ET presentes Literas debite executas et indorsatas earundem latori reddatis. ET vos qui presentes executi fueritis, sitis ibidem dictis die et loco, coram nobis seu dicto nostro Iusticiario, portantes vobiscum summonitionis vestre testimonia inscript. pro premissis vel ipsos testes. AD quod faciend. vobis et vestrum cuilibet, coniunctim et diuisim vicecomitibus nostris in hac parte, nostram committimus potestatem. DATUM sub testimonio nostri magni sigilli, apud Edinburgh, xij die Februarij 1604, et regni nostri Scotie tricesimo septimo, anno Anglie, Gallie et Hibernie primo.

THE quhilk Summondis, with the executionnes and Indorsationes thair of, wer producit be the said Sir Thomas Hammyltoun of Monkland knycht, Aduocat to oure souerane lord, in presens of the said Erle of Montrose, Great Commissionar of this present Parliament, and haill Estaittis of the famin Parliament, first vpoun the tuentie sext day of Aprile last bipast; and thairefter the famin wes producit in thair presens, and presens of the Lordis of Articlis, upoun the tuentie aucht day of the said moneth of Aprile last bipast: Vpoun the quhilk tuentie aucht day of Aprile, the said Sir Thomas Hammyltoun, Aduocat to oure souerane lord, in his hienes name, past *simpliciter* fra the persute of the said ROBERT MURE, brother germane and apperant air to the said vmq^{le} *Walter Mure of Cloncairde*, and *Jonet Mure* his sister, and thair Tutouris and Curatouris, for thair interessis; as also, past *simpliciter* frome the haill ressones, haill pointis and articlis contenit in the said Summondis of Treassoun, beirand and contenand as is abonewrittin, sua far as the famin extendis or may be extendit to the saidis *Robert* and *Jonet Mures*. Lyk as, also this instant day, in presens of my Lord Great Commissionar and haill Estaittis of Parliament, the said Sir Thomas Rollok, Aduocat depute, in absens of the said Sir Thomas Hammyltoun, principall Aduocate, lykwayes past *simpliciter* frome the persute of the saidis *Robert* and *Jonet Mures*, and thair saidis Tutouris and Curatouris for thair interessis; and also past *simpliciter* frome the haill ressones, haill pointis and articlis contenit in the said Summondis of Treassoun, sua far as the famin extendis or may be extendit to the saidis *Robert* and *Jonet Mures*, and thair saidis Tutouris and Curatouris: Lykas, the said Sir Thomas Hammyltoun, principall Aduocat foirsaid, vpoun the said xxvij day of Aprile last bipast, had past *simpliciter* frome the famin, of befoir, in presens of the saidis Lordis of Articles. Vpoun the quhilkis haill premissis, the said Robert Mure, for himself and his said sister, askit Instrumentis.

¹ In *Act. Parl.* IV., 269, he is described *Johne Mure de Carquhene*.

IV. LORD FOUNTAINHALL'S *Abstract of the Case of Mure of Auchindrayne*.¹

THE story of the fact is remarkable. AUCHINDRANE, having conceived a deadly feud against THE TUTOR OF CASSILLIS, comes one day to Maybole, with intention to kill him, assaulted him under night, thought to have killed him, had he not been rescued by some of his neighbours. For which fact, Auchindrane and his complices past to the horne. (The Horning was produced by the Advocat.) At lenth, this enmity was taken away, not only by publick and sworn reconciliation, but also by marriage of the said *Auchindrane's eldest sone on the Tutor's daughter*. After which, *the Tutor* lived with *Auchindrane* in all friendship, trust, and assurance imaginable. And going in to Edinburgh, and willing to do *Auchindrane's* busines there, as weill as his oune, he caused his man leive at *the School-master of Air* his house, a Letter for *Auchindrane*, signifying that he was going for Edinburgh to-morrow, and would gladly meet with him at the West end of Air, at the Duppils, or² he went. This advertisement was sent with a schoolboy called WILLIAM DALRIMPLE, who delivered it to old Auchindrane, sitting with *Walter Muir of Cloncaird*; who, immediately upon his reading of it, sent back the boy, and entreated him to say, that he had neither got him, nor delivered him the Letter. Then, resolved with the said Walter, to advertise THOMAS KENNEDY of *Drummurchy* of the certainty of Culzain's journey, and the way he intended to ride; advising him to use that occasione to revenge himselfe on him. The advertisement, with this advice, (he) sends with on³ *Macadam*, as is clearly proven by the Deposition of Witnesses. *Drummurchy*, by the advertisement, counsell, and instigation foirfaid, waites the gentleman, in the place he had tryted⁴ *Auchindrane*; and most treasonably murderours him. Wheirfor,⁵ *Drummurchy* stands forfaitured by Act of Parliament.

He, having turned fugitive, was much assisted and supported by *Auchindrane*; who, fearing that discovery of his accession to the said treasonable Murther might be made by the said *William Dalrumple*; to eschew it, caused him first to be secretly conveyed to his house, wher he keiped him long quiet; at last, sent him to Arran, to *the Laird of Skelmorly*. After some tyme, returning from thence, he sent him away with one that was going to the wars in Flanders, hoping he should never see him againe. Wheir, having staid some tyme, the boy longed to returne. Being returned, and *Auchindrane* getting notice theirow, he was troubled—immediately fetched him to his hous, and put him with ane JAMES BANNATYNE, in *Chapeldonald*, his tennent; whom he caused fetch him with him to THE SANDS OF GIRVAN, at 10 a'clock of even; wher they murdered him, and throw him in the Sea, so far as they could waid.

This treasonable Murder, with all its circumstances, is most clearly made out, by the Depositions of Witnesses, who also deponed of a speciall friendship after that, pretended to the said *James Bannatyne*; so that they gave him a life-rent Take⁶ of Chapeldonald. Then they perswaded him to go out of the way to Ireland, giving him a Letter of recommendation to *Drummurchy*: And after he was there, he lacked for nothing. Frequent correspondence betwixt him and *Auchindrane* and his wyfe: Then, caused *James Cunninghame*, his seruand ther, who knew of their concealing of *William Dalrumple*, absent himself, for eschewing of tryall. Also, *the Lady Auchindrane*, for the same reason, absented herselfe.—Proven by Witnesses, that *Auld Auchindrane* would have hyred *James Penny-cuick* to go to Ireland, and their to murder *Bannatyne*.—Then he wrote to *Stairs*, that because he was bruited for the slaughter of *William Dalrumple*, he was willing to tranfact with him theirow.⁷

¹ From *Fount. Abstract of Books of Adjournal*, MS. Adv. Library. It was thought proper to preserve the account given by this eminent Lawyer;—but at same time, it appears unnecessary to point out to the reader in how many particulars his *traditional* Account differs from the Record; which renders it probable that his lordship wrote from memory, or noted down the facts from reports then prevalent.

⁵ For which fact.

⁶ Tack; lease.

⁷ That is, he was willing to enter into terms of com-

promise with the relations of the deceased. As they were not wealthy, he considered he could, through the mediation of their Chief, the Laird of Stairs or Dalrymple, easily bribe them to silence; so as either to procure from them 'Letters of Slains,' or at all events, get them to abstain from prosecuting him and his son for the Murder.

All which are so clear evidences and manifest probations, as could hardly be expected, in so covered and crafty Murthers.

V. ILLUSTRATIONS *relative to the* POPULAR SUPERSTITION *of touching the Corpse of a Murdered person, as an ORDEAL or TEST for the discovery of the Innocence or Guilt of suspected Murderers.*

(1.) OPINIONS *entertained by the Ancients on the subject of the Blood.*

FROM the earliest periods of History, sacred and profane, it appears to have been the general opinion of mankind, in all Nations, that the soul, as well as the vital principle, *had their existence in the blood.* This idea was greatly strengthened by the strong and repeated testimonies afforded in the Sacred Scriptures, under the Mosaic dispensation; where it is expressly laid down, as an undeniable principle, that THE BLOOD, with the spirits therein contained, is *the seat and support of life.*¹ Without multiplying quotations from the Pentateuch, which are extremely numerous, it is enough for the purpose of this enquiry, to instance the frequent injunctions of Moses to the Children of Israel, *to abstain from blood.* One of the most remarkable of these passages is, ‘*Blood with THE LIFE thereof, which is THE BLOOD thereof, shall ye not eat;*’²—and the same injunction was repeated throughout the Law of Moses, in almost every various form, which the wisdom and sagacity of the Legislator could devise. It is not unworthy of remark, that the early Christians strictly observed this command, which had been repeated by the Apostles, to abstain from ‘things strangled, and from blood.’ This Divine command having been given to the Jews, in the subordinate instance of abstaining from the blood of the lower animals, in making use of their flesh for the ordinary purpose of food, it was by no means unnatural that they should have thence concluded, that THE LIFE or vital principle resided in the blood *after Death*, even after its particles were apparently dissolved, and after the whole mass had returned into its native dust.

A similar opinion is to be found in *Lucretius*³ and other profane writers, as *Empedocles*, *Critias*, &c. who held that THE SOUL *was a suffusion of blood about the heart*—and consequently, that *it is the blood itself.*⁴ According to this opinion, *Homer* gives death the epithet, *purple*: *πορφύρεος θάνατος.*—*Iliad*, v. 5, 83;—*Virgil* likewise alludes to it: ‘*Purpuream vomit ille animam.*’—*Æneid ix.*, v. 349. ‘*Undantoque animam diffundit in arma cruore.*’—*Æneid x.*, v. ult. Nor are we without frequent instances of this in our English poets. *Milton* says of Abel,

‘He fell, and deadly pale,

Groan’d out his soul with gushing blood diffused.’

Sir Robert Blackmore also has the following passage:

‘Gasping he lay, and from the griesly wound
The crimson life ebb’d out upon the ground.’

Lee, in the tragedy of *Nero*:

‘With many a wound she made her bosom gay;
Her wounds, like floodgates, did themselves display,
Through which life ran in purple streams away.’

And *Cowley*, *David* 4:

‘His life for ever spilt, stain’d all the grass around.’

It was likewise a very early popular opinion, among profane Greek and Latin authors, that the blood

¹ *Gen. ix.* 4. See also *Levit.* &c. *passim.* ² In modern times, that highly distinguished physician, HARVEY, the discoverer of the circulation of the blood, maintained the hypothesis, that *the blood was actually possessed of a living principle*, and that the life of the whole body is derived from it; in which opinion he was supported by the celebrated Mr *John Hunter*, and other anatomists and physicians of eminence. It would be foreign to the subject of this Notice to enter minutely into the opinions of modern writers, who are extremely divided upon the point. ³ ‘That they know well, the soul consists in blood.’ *Creech’s Lucret.* B. iii. p. 43. ⁴ *Aristotle de Anima*, lib. I. c. 2; *Cicero*, *Tuscul.* 1; *Macrobius* on the dream of *Scipio*, lib. I. c. 14; *Tertullian* of the Soul, cap. 4.

springs naturally towards that part whence a blow is received¹—and they also affirmed that the soul pursued with enmity a Murderer of the body.² In conformity with this latter idea, we find that *the blood*, according to the ancients, and especially the Jews, was figuratively, but most emphatically, represented as *crying to Heaven for vengeance!*—and that that cry could only be appeased by the shedding of the blood of the Murderer. In the powerful language of Holy Writ, the Almighty, when denouncing Cain, the first murderer, is represented as exclaiming to him, ‘*The voice of thy brother’s blood crieth unto me from the ground!*’

Accordingly, in pursuance of this sentiment, the Jews had an *Avenger of blood*, who was the next of kin to the murdered person—and whose awful, but imperious, duty it was, relentlessly to pursue the Murderer to the death.

There is no doubt that this ancient opinion of *the life being in the blood*, continued to be entertained by THE EARLY CHRISTIANS of the Western Churches of Europe, so late as the tenth century. An able writer³ asserts, that ‘the Holy Church throughout the world did, in its first and purest, and even in the darker ages of the tenth century, or later, observe and keep the precept to abstain from eating blood—and that the Churches of the East and of the South, to this day, reproach the Western Church with the violation of this Apostolical constitution.’ On this point it may likewise be remarked, that *Tertullian* is said to have written in defence of the doctrine, that the soul was *indissolubly* connected with the blood.

From these few scattered hints, the application of the doctrine to the instance in question appears to be natural and easy. The *soul* of a murdered man was considered to linger about *the body* until the Murderer could be convicted, and his blood shed to appease the *manes* of the deceased. According to the remains of this superstitious principle, which are still to be traced in modern times, in various countries, but especially in Great Britain and Ireland, and in Germany, &c., the prevailing idea was, that (even after the blood was dried up and the corpse decayed and mouldered into a mere skeleton, nay, though disjointed into separate bones and fragments) the TOUCH or PRESENCE of the MURDERER would act upon these decayed relics, and that *the life* or blood would, upon Appeal being made, return to manifest the Murder.

A very curious instance of this branch of the superstition has been preserved by Sir WALTER SCOTT,⁴ who, in an early work, relates the circumstances in his usual felicitous manner:—‘Two young men, going a-fishing in the river Yarrow, fell out; and so high ran the quarrel, that the one, in a fit of passion, stabbed the other to the heart with a fish-spear. Astonished at the rash act, he hesitated whether to fly, give himself up to justice, or conceal the crime; and, in the end, fixed on the latter expedient, burying the body of his friend very deep in the Sands. As the meeting had been accidental, he was never suspected, although a visible change was observed in his behaviour, from gaiety to a settled melancholy. Time passed on, for the space of *fifty years*; when a smith, fishing near the same place, discovered an uncommon and curious *bone*, which he put in his pocket, and afterwards showed to some people in his smithy. The Murderer being present, now an old white-headed man, leaning on his staff, desired a sight of the little bone. But how horrible was the issue! *No sooner had he touched it, than it streamed with purple blood!* Being told where it was found, he confessed the crime, was condemned, but was prevented, by death, from suffering the punishment due to his offence.’

(2.) INSTITUTION of the BAHR-RECHT or LAW OF THE BIER, and FORM of the CEREMONIAL.

THERE cannot be a doubt that, from very early times, TESTS or ORDEALS were instituted by the common consent of almost all Nations, for the detection of hidden and atrocious cases of Murder, which had baffled all the ordinary methods of judicial scrutiny. The mysterious doctrines taught by the Metaphysicians of the dark ages, on the subject of an *universal sympathy* and *antipathy* existing in nature, would lead those who believed in their theories to approve of such an obvious Test as that

¹ See quotation from *Lucretius*, ‘*Idque petit corpus*,’ &c. in *Del Rio’s* and *De L’Ancre’s* notices.

² *Plato*, &c.

³ Dr Deacon.

⁴ *Minstrelsy of the Scottish Border*, II. 425.

of compelling suspected persons to come forward and *touch the murdered corpse*—and accordingly, the *BAHR-RECHT*, or *LAW OF THE BIER*, was early recognized, even by Judicial authority, throughout all civilized Europe. It is extremely probable, that such a striking ceremonial as that just referred to, would first be seized upon by the Clergy; for it would tend, in a great measure, to strengthen their own hands, while it would also promote the interests of ‘Holy Mother Church;’ and, at the same time, the almost miraculous discovery of secret crimes would directly lead a superstitious and ignorant people to give God the glory, and to ascribe to His immediate presence and intervention, the detection and subsequent punishment of the Murderer.

Perhaps it may be premised, that, properly speaking, the recognized *ORDEALS* or Appeals to the immediate interposition of God, being what was termed the *Vulgaris Purgatio*, or *Judicium Dei*, were the *Judicium Ferri callidi, Aquæ, et Ignis*, i. e. Trials by RED-HOT IRON, FIRE, and WATER. In process of time, the *JUDICIAL COMBAT*, the *ORDEAL OF THE CROSS*,¹ and the *CROSSED*,² or consecrated bread and cheese, were added to the other Appeals. In the East, no less than *nine* Ordeals are still in use, viz. the Balance, the Fire-ordeal, the Water-ordeal, the Poison-ordeal, Trial by the Cosha or three draughts of consecrated water, the Rice-ordeal, the Ordeal by hot oil, the Ordeal by a red-hot Iron ball or lance-head, the Ordeal by Dharmarch, or drawing forth from a jar of certain Images, cloth, &c. Amongst all these various forms, the touching of a Murdered corpse is not reckoned as a proper Ordeal; but, as will be immediately shown, it was adopted and recognized as a Test, or popular Ordeal, both on the authority of the Church and of the Criminal Tribunals of civilized Europe.

In regard to *THE FORM OF THE CEREMONIAL*, it must have been extremely imposing; and especially, when regulated by the Church, who increased the otherwise solemn spectacle by Processions, the exhibition of their holy relics, lighted tapers, and all the usual machinery of the Romish Church, was admirably calculated to have inspired the guilty mind of the already conscience-struck Criminal with awe and terror, and eventually compel him to confess his enormous crimes, in the face of the assembly.

The mangled body of the murdered person was stretched upon a bier, covered with a fair linen cloth, and placed before the High-Altar; when, after a procession of Priests hymning an anthem, the suspected person was conducted forward to the High-Altar, where, after performing his devotions, the face of the deceased was uncovered before him. He was then called upon to place one hand upon the mortal wound, and often the other upon the mouth of the deceased—and, in that posture, to invoke Heaven to attest his innocence—at the same time calling down its curses and instant vengeance on his head, should he, after such asseverations, be guilty. If, on his approaching the body, or during the above ceremo-

¹ Two pieces of wood were prepared exactly like each other; but on one of them was the form of the Cross. Both being wrapped up in fine wool, were laid on the altar, and after prayers, &c., a Priest approached the Altar, and took up one piece, which if it proved to be that on which the Cross was cut, the accused was found innocent. Other solemnities, unnecessary to be noted, also took place.

² This primitive Ordeal was thus performed. A piece of barley bread and a piece of cheese were laid upon the Altar; and, after various Prayers, at length the Priest fervently petitioned, that ‘if the party accused was guilty, God would send his angel *Gabriel* to stop his throat, that he might not be able to swallow that food.’ This ended, the accused advanced to the Altar, took up the bread and cheese, and commenced eating. If he swallowed deliberately and freely, he was declared innocent—but if he could not swallow them, he was pronounced guilty! This coincides with the Eastern Ordeal of the Rice, &c., and originates in this well-known circumstance, that persons labouring under violent mental excitement, such as accusation of a crime of which they are *conscious of guilt*, are, in a great measure, deprived of the natural supply of *saliva* necessary for the process of mastication and deglutition; and, consequently, it would generally happen, that the strong mental struggle under which the accused was suffering, would be the means of preventing his fulfilling, what, at first sight, appears so foolish and simple a Test. It is hardly necessary to remind the reader, that barley bread which has been baked for several hours, requires a considerable quantity of liquid to enable one to swallow it. The pungency of the cheese would act as a sufficient stimulant to assist an innocent person who was required to undergo this Ordeal; but would merely increase the confusion and hasten the discomfiture of one whose mouth was already parched with conscious fear and remorse. It was almost universally noticed, that *the guilty* greedily snatched large mouthfuls, under the mistaken idea of getting sooner over with it!—and that usually a second or a third attempt to swallow produced cough and constant choking, so as to force them to desist, and either to confess their crime, or permit sentence to be passed against them in silence. On the other hand, *innocent* persons leisurely ate the portion given them, with little or no inconvenience. It will be found, upon examination, that many similar Ordeals and rites proceeded on the like minute knowledge of natural causes.

nial, the blood should gush from the mouth, nostrils, or wound—this was held sufficient evidence of his guilt.

The reader may here be reminded, that the Ceremony, thus shortly and imperfectly described, was only reserved for *extreme cases*, where all legal proof had failed; and where there was strong circumstantial evidence to implicate the party accused, either as ‘guilty actor, art, or part’ of the Murder. It is impossible to state precisely what Nation first practised this Ordeal,—but it was obviously founded on a deep knowledge of human nature. Few even of the most hardened and practised villains could have undergone such a Test unmoved; and when it is considered that the act was performed in the presence of the Judges, Clergy, and the accusers, it would generally be easy to distinguish between the confusion of an innocent person accused of the crime, and the terror and conscience-struck countenance and demeanour of the Murderer; and even should he have nerve enough to brave the worst part of this severe Ordeal, his very confidence and studied boldness would prove the means of his detection. The accidental bleeding of the corpse, also, might overthrow the assumed courage of the Murderer,—and, in fact, was often the means of producing the most abject Confession of the crime; and compelled the recreant felon to utter cries for mercy, which even *the torture* had failed to extort.

Nothing can so well illustrate this remarkable Ceremonial, as the following powerful passage from the pen of the greatest living writer of this age, who has bestowed much attention on such subjects; and has done more towards the elucidation of the manners, customs, and superstitions of this country than any preceding author. ‘The eastern window, richly and variously painted, streamed down a torrent of chequered light upon the high altar. On the bier placed before it were stretched the mortal remains of the murdered man; his arms folded on his breast, and his palms joined together, with the fingers pointed upwards, as if the senseless clay was itself appealing to Heaven for vengeance against those who had violently divorced the immortal spirit from its mangled tenement. The face was bare, as were the breast and arms. The rest of the corpse was shrouded in a winding-sheet of the finest linen, so that, if the blood should flow from any place which was covered, it could not fail to be instantly manifest. He paused before the Bier, and his voice faltered, as he swore by all that was created in six days and six nights, by Heaven, by Hell, by his part of Paradise, and by the God and author of all, that he was free and sackless of the bloody deed done upon the Corpse before which he stood, and on whose breast he made the sign of the Cross, in evidence of the Appeal. No consequences ensued. The body remained stiff, as before. The curdled wounds gave no sign of blood.’¹

Another writer, to whom the Antiquities and History of England has been vastly indebted for the large stores of information rescued by him from sources which may be termed as generally inaccessible, even to the great bulk of antiquaries, has, in a posthumous work, professedly undertaken for the purpose of illustrating the Superstitious observance now under consideration, embodied the result of his enquiries in the following striking passage.²

‘BARON. At thy request th’ Ordeal is prepared :
I grant thee this appeal ! What, though it claims
With me no faith ? By custom authorized,
Let it be made. At least, this good results,
We better satisfy the common mind.
BENEDICT. Experience, good my Lord, has often proved

¹ Sir Walter Scott’s *Fair Maid of Perth*, vol. ii. p. 306.

² Strutt’s *Test of Guilt, or Traits of Ancient Superstition*; Quarto, Lond. 1808, p. 79;—a posthumous work of the celebrated English Antiquary, Joseph Strutt, published by his son. Unfortunately Mr Strutt did not live to compose the notes which he had intended to prepare illustrative of this remarkable subject, which would have put the Public in possession of all that was worthy of knowing about it. As it is, the Editor has done his best to pave the way, by providing materials for some abler and more successful Antiquary doing justice to such an enquiry, in a regular treatise.

That Providence, in such Appeals as these,
Has manifested suddenly its power,
And struck the guilty mind with sharp remorse—
Enforced confession—or abash'd the heart,
That, coward-like, th' offender has shrunk back
Confused, and manifested signs of guilt
Too plain to be mistaken.

BAR. I, indeed,
Have heard such tales.—Well, Father, then proceed.

BEN. Before the holy Altar lies the corpse—
Here let th' accused come—and come with him
All his accusers—no exception made :
They all must touch the body. 'Tis with us
To scrutinize with care each countenance—
For then 'twill be an index of the heart,
Unless the heart be callous to all good,
Devoid of feeling, nay, be changed to stone.

BAR. Proceed—and may success clear up my doubt !
But miracles, I ween, are out of date.

BEN. Let young Fitzhugh approach—and bring with him
All his accusers.—Now begin the rites.

[*A procession of priests, singing a dirge—and when ranged on both
sides of the altar, conclude with a chorus.*]

BEN. HENRY FITZHUGH, come forward !—Touch the corpse—
May Holy Saints protect the innocent !

HENRY. Thy mangled body, Dorothy, I touch—
And make, with all my soul, Appeal to Heaven !
Ah ! could those ghastly wounds bot speak, they would
Proclaim mine innocence !—But I submit.

BEN. Pass on, my son.—You see, no change appears—

[*Aside to the BARON.*]

Come forward, his accusers—and first, thou,

[*To GRIM.*]

Most loud against him—touch, and make Appeal !

GRIM. Why should I touch her ? No ! I will not yield
To such fond Superstition !—I stand not
Within the pale of accusation !—No !

BEN. What then can hinder thee to make Appeal ?
If thou be guiltless, Heaven is thy friend !

GRIM. Or friend or foe, I will not make Appeal !

BEN. Thou art afraid.—Thy conscience is not clear !

GRIM. 'Tis false !—I'm innocent !—Well, if I must
Join in the folly—What is to be done ?

BEN. Look up to Heav'n, and touch the breathless corpse.

[*GRIM strikes his hand down suddenly—and then starts from the body.*]

RALPH. See ! Where Grim touch'd, the blood has gush'd afresh !—

.....

(3.) OPINIONS *relative to the abstract question, whether the CORPSE of a Murdered person BLEEDS on the touch of THE MURDERER? And the causes and consequences of such an exhibition.*

It is the Editor's conviction, that the most satisfactory, as well as the most faithful, manner of treating matters of an abstruse and forgotten description, such as the Superstition under examination, is, to afford to the reader miscellaneous extracts from writers of various ages and countries, who have commented on the subject. Besides being the plan laid down at the outset of this work, this mode enables the reader to examine their theories and conclusions in the very language of the respective authors themselves, many of whose works are now of rare occurrence, and are very seldom consulted, excepting for the explanation of similar facts.

In the preceding remarks it has been shown that the ancient opinion was, that the Soul of a Murdered person lingered about the body, until appeased by the discovery of the foul deed, and by the subsequent shedding of the Murderer's blood. It is obvious, therefore, that on the original institution of this Test or Ordeal, during the earlier and in the dark ages, the purpose of requiring the accused to prove his innocence *before the Corpse*, originated in the idea and belief, that by the Murderer's approach, and especially by his polluted *touch*, the Soul was excited to an instant manifestation of its indignation, *by appearing in the form in which it was supposed to subsist*, viz. in that of *blood*.

(i.) To commence, then, with the examples alluded to, *Delrio*,¹ who is the great authority on such subjects, remarks, 'Cadaver coram occifore, propter præcedentem contactum, sanguinem solet fundere. Resp. Varias reddi causas, quidam miraculo tribuunt; quidam casui, quo factum sit aliquando, ut cadaver tum cruorem mitteret, cum præfens erat reus Homicidii. Recensui alio loco multas hæc de re sententias et auctores laudavi:² Neque adhuc dum video, quid solidius adferatur illa antipathia, ex vehementi odio occisi in occiforem; quod qualitatem latentem et arcanam imprefferit corpori, cum cadavere permanentem: Et huc referendum illud *Lucretii*:

Idque petit corpus mens unde est faucia amore.

Namque homines plerumque cadunt in vulnus, et illam

Emitat in partem sanguis, unde icimur ictu.

Et si cominus est, hostem ruber occupat horror!

Ut sit vivi amantis et mortui hostis comparatio.³—In treating of ORDEAL BY WATER he thus expresses himself:—'Octavum argumentum, teste *Binsfeldio*, Indicium homicidii ex cadauere sanguinante coram occifore peti-*videtur soli Divino miraculo adscribendum*: Ergo sentiendum similiter de fagis supernatantibus? Respondeo, quid de antecedente sentiam, hoc opere non semel me indicasse; sed esto, sit adscribendum *miraculo*: An eadem ratio huius probæ? Dicis non probas. Ego qui nego discrimen dabo. Nulla in sanguis illa missioe causa subest suspicionis de pacto cum Dæmone: nihil illic miscetur superstitiosi: non queritur illic a Deo signum; et proinde nec Deus tentatur,' &c.⁴

(ii.) HE also mentions in another place:⁵—'Ex communi opinione Doctorum et Judicum, si cadaver positum coram reo sanguinem emittere inciperet vel ex vulnere, vel ex ore, vel ex naribus, hoc indicium quidam magni faciunt, et de ejus cum alias a me disputatum hoc eodem opere. Ego istud indicium nunquam existimarem sufficere ad torturam, quicquid graves doctores quidam in contrarium dixerint.⁶ Moveor, quia verè est indicium remotum, et quasi prodigiosum, de cujus cum non constat, et incertissimum, quod nullo jure vel causâ juridicè probatâ nobis constat, et tortura maximi est prejudicii. Quare nisi accedant fama, minæ, inimicitia, vel simile adminiculum, nunquam ad torturam ex

¹ Disquisitionum Magicarum libri sex, &c. *Martini Delrio*, Edit., *Venetii*, 1606. Lib. i. cap. 3, q. 40. ² Comment. in Octavianum Senecæ, ver. 127. ³ Sic *Lemnius*, lib. 2; De occultis naturæ miraculis, cap. 7; *Langius*, epist. 40. *Pictorius*, Dialog. 9; *Gemma*, lib. 1; De caracterism, cap. 6. ⁴ *Delrio*, Lib. iv. cap. iv. quest. v. de proba aquæ frigidæ, &c. ⁵ *Delrio*, lib. v. p. 25. ⁶ Post *Aug.* et *Parid.* *Boerius* dec. 166; *Blanchus* de ind. ad l. fin. de quest. n. 408; *Carrer.* tract. de indic. ; Indi. 27, n. 2; *Novel.* regn. 184; *Menoc.* de arb. cas. 270, n. 16; et de præsu. l. 1, q. 89, n. 128; et alii.

hoc indicio Deum timenti judici procedendum, affirmavit *Farina*, nu. 156 post *Ant. Gomez*, lii. fufé et prudenter hoc difcutientem d tom. 3 cap. 13 a num. 15, et *Marfil*. in pract. et diligenter num. 181. *Mafcard* et alios.

(iii.) ANOTHER author, who was Counsellor of State to King Louis XIII of France, makes the following interesting observations, under the Title,—‘DES ATTOUACHEMENS DES HOMMES : *Sçavoir, fi vn Meurtrier s’approchant, ou touchant le corps d’un homme qu’il a meurtry, en peut faire reiaillir du fang.*—’ JE commenceray par ce traict commun, que le Corps d’un homme meurtry, eftant touché ou approché de Meurtrier, fait reiaillir du fang, tefmoignant qu’il entre auffi-toft en accusation, et crie vengeance contre luy, voulant comme tirer à compaffion tous ceux qui le voyent, et comme les ef mouuoir à luy en faire auoir raifon. *Theodoric* vit dans vne efcaille ou tect de poiffon, qui luy fut feruy à table, la teſte de *Symmachus*, qu’il auoit tué, laquelle le menaçoit, verfant du fang en quantité, dequoy il eut fi grande frayeur, qu’il en mourut bien-toſt apres. Et ne ſçay ſi ce qu’on dit y eſt neceſſaire qu’il faut que ce ſoit vn corps fraiſchement aſſaſſiné. Veu qu’un homme d’honneur, faiſant le procez à vn Meurtrier, m’a aſſeuré, que, l’ayant approché du corps qu’il nioit auoir tué, ietta du fang par le nez aſſez abondamment, apres le ſeizième iour de l’homicide commis. Sur quoy *Del-Rio* dit, qu’il ne voit aucune raifon plus folide que celle de l’antipathie qui eſt entre le Meurtry et le Meurtrier, et leur haine, la quelle aggrave certaine qualité latente et cachée, et la tient imprimée dans le corps demeurant encore avec le cadauer; employant là-deſſus ces vers de *Lucrece* : “ Idque petit,” &c.¹ Comme ſ’il auoit quelque conuenance et raport, entre vn amy viuant, et vn ennemy mort !

‘ Mais la verité eſt, qu’on ne ſçauroit colliger de là nulle forte de charme, cauſé par la veuë ou par l’attouchement, vn corps mort eſtant bien d’autre nature, que celui d’un homme viuant. Et de dire que c’eſt quelque diſſenſion cachée, qui tefmoigne l’inimitié qui eſt entre eux, laquelle ce corps ainſi outré, fait encore paroître apres la mort, le declarant par ceſte eſmiſſion de fang. On ne ſçauroit rendre nulle raifon valable de ceſte diſſenſion. Et ſe peut dire, qu’aucuns ont auancé et tenu ceſte experience pour veritable, pour l’auoir parauanture eſſayée ou veuë vne ſeule fois et par cas fortuit. Car il ſe peut faire que le corps d’un homme mort, qui a demeuré ſeize iours giſant en repos en quelque lieu, eſtant remué pour ſouffrir quelque viſite de Chirurgiens, eſmouuera par ce mouuement le fang qui ſ’eſt retiré és veines, et le fera fortir en abondance. Mais cela n’arriuera pas pluſtoſt en la preſence du Meurtrier, que du Juge qui luy fait le procez, ou deuant quelqu’autre que ce ſoit.’²

(iv.) THROUGH the kindness of DR SAMUEL HIBBERT, late Secretary to the Society of Antiquaries of Scotland, F.R.S.E., &c. whose philosophical, geological, and antiquarian researches have juſtly entitled him to a very conſpicuous rank in the literature of his country, the Editor has an opportunity of giving the following interesting extract from a rare volume in his Collection, entitled,—‘*Physiologia Epicuro-Gaffendo-Charltoniana* : or a Fabrick of Science Natural, upon the Hypotheſis of Atoms, &c. &c. By Dr Walter Charleton, Phyſician to the late Charles, Monarch of Great Britain.’ London, 1654. In this ſingular treatiſe, the author, in diſcuſſing ‘the cauſe of the freſh cruentation of the Carcaſſ of a Murthered man, at the preſence and touch of the Homicide,’ thus expreſſes his opinion :—‘THE cruentation (and, according to ſome reports, the opening of the eyes³) of the Carcaſſ of a Murthered man at the preſence and touch of the Homicide, is, in truth, the nobleſt of antipathies : And ſcarce any writer of the ſecrets or miracles of nature, hath omitted the conſideration thereof. This Life in Death, Revenge of the Grave, or loud language of ſilent Corruption, many venerable and Chriſtian Philoſophers have accounted wholly miraculous or ſupernatural, as ordained and effected by the juſt judgement of God for the detection and puniſhment of the inhumane Aſſaſſine !

¹ The ſame verſes as in *Delrio*’s quotation are here repeated. ² DE L’ANCRE, Conſeiller du Roy, Lnd. XIII. en ſon Conſeil d’Eſtat, ſur l’Incredulité et Meſcreance de Sortilege. Quarto, Paris, 1622, fol. 153. The curious reader is likewiſe referred to the following old authorities,—*Vair*, l. 2, c. 10, De *Fascina*. *Del Rio*, de *Contactu*. *Lemnius*, de *Occultis naturæ miraculis*, cap. 7, &c. ³ See the *Case of Jane Norkott*, afterwards quoted, p. 152.

And, lest we should seem too forward to expunge from the mind of any man the belief of that opinion, which to some may be a more powerful argument than the express command of God, to deter them from committing so horrible and execrable a crime as Murder, we shall so far concur with them as to conceive this effect to be Divine only in the *infatigation*, but merely natural in the *production* or *immediate causes*. Because the appearance seems not to transcend the capacity of natural means, and the whole syndrome and series of its causes may be thus explained. It is an opinion highly consistent, that in every vehement passion there is formed a certain idea, as well of the object whereupon the imagination is most intent, as of the good or evil connected unto, and expected from, that object; and that this idea is, as it were, impressed, by a kind of inexplicable figillation upon the spirits, at the same instant the mind determineth to will the present prosecution or avoidance of the object; so that, by the mediation of the spirits (those angels of the mind), the same idea is transmitted to *the blood*, and, through the arteries, diffused into all parts of the body, as well into the nerves and muscles, which are interservient to such voluntary motions as are requisite to the execution of the decrees and mandates of the will concerning the prosecution or avoidance of the object. This being so, we may conceive that the phantasy of the person assaulted by an assassin, having formed an idea of hatred, opposition, and revenge; and the same being characterized upon the spirits, and by them diffused through the blood; though the blood become much less fluid in the veins after death, by reason the vital influence and pulsifick faculty of the heart, which animated and circulated it, is extinct, yet, because at the presence of the Murderer, there issue from the pores of his body such subtle emanations as are consimilar to those which were emitted from him at the time he strove with, overcame, and killed the patient; and those emanations entering the dead body, do cause a fresh commotion in the blood, remaining yet somewhat fluid in its veins, and, as it were, renew the former colluctation or duell betwixt the yet wholly uncondensed spirits of the slain and those of the Homicide; therefore is it that the blood, suffering an æstuation, flows up and down in the veins to seek some vent or sallyport, and finding none so open as in *that part wherein the wound was made*, it issues forth from thence! And where the Murthered person is destroyed by strangulation, suffocation, or the like unbloody death, so that there is no manifest solution of continuity in the skin or other exterior parts of the body, in that case it hath been observed that the carcass bleeds at *the mouth* or *nose*, or both; and this only because in all vehement strivings, and especially in colluctation for life, the spirits and blood flow most plentifully into the arteries and veins of the head, as is visible by the great redness of the eyes and face of every man that fights; and where the blood fixeth in most plenty, there will be the greatest tumult, æstuation, and commotion when it is ferment, agitated, and again set afloat, by the Discordant Effluvia emitted from the body of the neer approaching or touching Murtherer—and, consequently, there must the vessels suffer the greatest stress, distension, and disruption, or apertion of their orifices.*

This passage fully explains the extraordinary opinions which were formerly entertained by the most eminent physicians, in England, during the reign of King Charles II.

(v.) DR HIBBERT likewise transmitted the following extract from the well-known work, entitled, ‘Ludovici Lavateri Theologi eximii de Spectris, Lemuribus, variisque præfagationibus Tractatus vere aureus.’—‘Aliquis à latronibus interceptus fuit; accedentibus latronibus ad cadaver, *statim cœpit recentem sanguinem stillare*, aut aliis signis præsentiam latronis significari. *Plato*, 1, Legum 1,² tradit eorum qui occisi sunt animas, sæpe interfectorum animas hostiliter insequitendi. *Marcellus Ficinus* fortè contingere putat, ut occisi hominis vulnus etiam jacente cadavere in eum qui vulneraverat, si modò ille cominus inflet, vulnus ipsum inspicieus, sanguinem rursus ejiciat, quod quidem evenire *Lucretius* affirmavit, et Judices observarint. *Dido* apud *Virg.* minetur *Æneæ*: Et cum frigida mors anima se duxerit artus, omnibus umbra locis adero; dabis, improbe, penas.—Similis locus est apud *Horat.* et alios

¹ Lugduni Batav. Apud Henricum Verbiest. Anno 1659.

² Lib. xvi. cap. 5, De Animorum Immort.

Poetas. Latro affedit mensæ, everfo poculo, vinum per solidum lignum mensæ manavit omnium magna admiratione.'

To conclude these Notices, the Editor, without offering farther observations on this branch of the subject, presents a variety of other extracts, all bearing on the same point, and tending to show the universal concurrence of Lawyers, Divines, Historians, Physicians, and Philosophers, in the ancient opinions already related as obtaining so general a belief over the civilized world, and especially in Europe.

(vi.) 'IN a secet Murther, if the dead carkasse be at any time thereafter handled by the Murtherer, it will gush out of blood; as if the blood were crying to Heaven for revenge of the Murtherer.'—*King James VI, Dæmonologie*, p. 136.

(vii.) 'I HAVE heard, by credible report, that the wound of a man murthered, renewing bleeding at the prefence of a dear friend or of a mortal enemy. Divers also write, that if one pass by a murthered body (though unknown), he shall be stricken with fear, and feel in himself some alteration, by nature.'—*Scot's Discovery of Witchcraft*, p. 170.

(viii.) 'WHO can alleage any certaine and firme reason, why the blood runnes out of the wounds of a man mured, long after the Murder committed, if the Murderer be brought before the dead bodie? Galeotus Martius, Jeronymus Maggius, Marfilius Ficinus, Valleriola, Joubert, and others, have offered to say something thereof.—Who (I pray you) can shew why, if a desperat bodie hang himselfe, suddennie there arise tempests and whirlwinds in the aire?'—*Living Librarie*, fol. Lond. 1621, p. 283.

(ix.) 'WHY dead bodies bleed in the prefence of their Murtherers? Because nothing is so hidden from Justice as Murder, they use not only torments of the body, but also the torture of the soule, to which its passions doe deliver it over, of which *Feare* discovering it selfe more than the rest, the Judges have forgotten nothing that may make the suspected person fearefull. For, besides their interrogatories, confronting him with witnesses, sterne looks, and bringing before him the Instruments of Torture, as if they were ready to make him feele them, they persuade him that *a carkasse BLEEDS in the prefence of his Murtherers*, because dead bodies being removed doe often bleed; and then, he whose conscience is tainted with the *synterefsis* of the fact, is troubled in such fort, that by his mouth or gesture he often bewrayes his own guiltinesse, as not having his first motions in his owne power.'—*Five Philos. quest. answered*, 4to, Lond. 1653.

(x.) IN the *Athenian Oracle*, I. 106, there is inserted a particular relation of a corpse falling a-bleeding at the approach of persons supposed to have in any way occasioned its death. The phenomenon is thus endeavoured to be accounted for. 'The blood is congealed in the body for two or three days, and then becomes liquid again, in its tendency to corruption. The air being heated by many persons coming about the body, is the same thing to it as motion is. 'Tis observed that dead bodies will bleed in a concourse of people, when Murderers are absent as well as present; yet legislators have thought fit to authorize it, and use this trial, as an argument at least, to frighten, though 'tis no conclusive one to condemn them.' *Vid.* also p. 193.

(xi.) 'IT is a thing known, yea, by many undeniable instances witnessed, that marvellous discovery of concealed Murder, by the bleeding of the body, upon the touch of the Murderer! I confess, it

¹ 'What is it that should make men's guilt so legible oft in their countenance, even when they study most to conceal it; and thus cause them give their tongue the lie, yea, bewray to bystanders whether they will or not some

should be hard to assest the lawful and warrantable practice of such an Appeal to so extraordinary and stupenduous a sign from the Lord, where Scripture goeth not clearly before us. But, on the other hand, such a thing so surely tried for such an end, and in the case where all ordinary means of discovery have been wanting, I think, calleth us to a serious remark thereof, while it so visibly seemeth to witness his hand who doth make inquisition for blood!

(xii.) SIR KENELM DIGBY takes it for granted that a Corpse often bleeds on such occasions—and thus accounts for the phenomenon. ‘And to this cause, peradventure, may be reduced the strange effect which is frequently seen in England, when, *at the approach of the Murderer, the slain body suddenly bleedeth afresh*. For certainly the Souls of them that are treacherously Murdered by surprise, use to leave their bodies with extreme unwillingness, and with vehement indignation against them that force them to so unprovided and abhorred a passage! That Soul, then, to wreak its evil talent against the hated Murderer, and to draw a just and desired revenge upon his head, would do all it can to manifest the author of the fact! To *speak* it cannot—for in itself it wanteth the organs of voice; and those it is parted from are now grown too heavy, and are too benumbed, for to give motion unto: Yet some change it desireth to make in the body, which it hath so vehement inclination to; and therefore is the aptest for it to work upon. It must then endeavour to cause a motion in the subtlest and most fluid parts (and consequently the most moveable ones) of it. This can be nothing but THE BLOOD, which then being violently moved, *must needs gush out at those places where it findeth issue!*’

(xiii.) EXTRACT from a Letter, the Rev. H. Cross, Caithness, Jun. 11, 1712, to the Rev. Robert Wodrow.² ‘Some Murthers in this cuntry have been discovered, *by causing suspected persons touch the dead corps*; which upon their touching have immediatly bled; whereupon some have confessed guilt, and have been executed. I cannot tak up time in telling the particular circumstances thereof.’

(xiv.) MR BURNETT,³ in treating of presumptive evidence, remarks, that ‘in various Trials for Murder, we find the notion of *the corpse bleeding, if touched by the Murderer*, a circumstance founded on. In *Stewart Abercrombie’s Case*,⁴ we see it stated, in the Information for the prisoner, as a circumstance in his favour, that he had, without fear or dread, gone and touched the body of the person murdered. And in the Case of *Howatson*,⁵ before Lord Justice-Clerk Cockburn, we find it stated and insisted on as a strong circumstance of suspicion against him, *that he had refused to go to the lifting of the corpse*. This even is stated as one of the circumstances in the Interlocutor of relevancy; and perhaps rightly so, on the supposition of *the popular belief of THE MURDERER’S TOUCHING THE CORPSE.*’

(4.) PARTICULAR INSTANCES *where the CORPSES of Murdered Persons have been TOUCHED, as a TEST OF GUILT*—REMARKABLE CRIMINAL TRIALS, *in which this circumstance was founded on*—THE OPINIONS OF LAWYERS, &c.

(i.) THE earliest recorded notice which the Editor has been able to find, in British History, of this superstitious custom, is in Buchanan’s History of Scotland;⁶ who relates, that, in A.D. 972, after the atrocious Murder of KING DUFFUS⁷ by the assassins hired by Donald, Governor of the Castle of Forres, they ‘carried him out so cunningly a back way, that not so much as a drop of blood appeared,’

secret trouble and sore they have within? Doth it not clearly show the power of Conscience, which hath such authority on men, that without violence or constraint from others, doth even force them to confess the truth, and supply the room of witnesses.’—*Fleming’s Fulfilling of the Scripture*, 3d edit. Glasg. 1681.

¹ *Ibid.* ² Wodrow MSS. Orig. Letters. Quarto, XIX. ‘Remarkable Providences.’ Adv. Library, Edinburgh. No traces can be had of the particular instances to which the Rev. Gentleman alludes. They would doubtless prove of much interest, could they be still discovered. ³ *Burnett on Crimes*, p. 529. (Note.) ⁴ Jan. and Feb. 1718. ⁵ James Howatson, tried for Murder, at Dumfries, May 1727. ⁶ *Buchanan’s History of Scotland*, Ed. 1762, i. 247. ⁷ Son of King Malcolm I. He was murdered A.D. 972.

&c.—‘ The executioners of that bloody fact were sent out of the way by Donald ; because there is an opinion, *received from our ancestors*, which as yet obtains amongst the vulgar, *That BLOOD will issue from a dead body, many days after the party's being murdered, IF THE MURDERER BE PRESENT ; just as if the fact had been newly committed.*’ This takes it for granted, that the understanding was, that the TOUCHING of the corpse must have been infinitely more available, towards the discovery of the Murderer.

(ii.) RAPIN¹ records a circumstance, as having occurred at the interment of KING HENRY II. of England, A.D. 1189. That monarch having fallen sick at *Chinon*, caused himself to be carried into the Church, before the Altar ; where, after confessing himself, and expressing repentance, he expired. ‘ His corpse was removed to Font-Evrard, in Anjou, where he was buried, according to his own order. An extraordinary accident rendered the funeral of his body very remarkable. His son RICHARD (*Cœur de Lion*) coming to meet the funeral pomp, in order to attend his father to his grave, upon his approach THE BLOOD in great abundance gushed out of the mouth and nostrils of the corpse ! RICHARD, though naturally very hard hearted, was so moved at this sight, that he burst out into tears, and openly accused himself of being the occasion of his father's death.’ *Hume*² adds, that ‘ he exclaimed, *agreeably to a vulgar SUPERSTITION, that he was his father's MURDERER !*’

(iii.) BUT, without attempting too laborious an investigation of our early Historians and Chroniclers on so insulated a point, it is enough for our purposes to preserve the memory of such Cases as have been peculiarly striking, and which have occurred nearer to our own times. Accordingly, one of the most remarkable instances of *Touching* as a Test of Murder,³ is the Case of the Murder of JOHAN NORKOTT, wife of Arthur Norkott, the incidents of which were fortunately preserved amongst the papers of *Sir John Maynard*, Sergeant at Law,⁴ and afterwards one of the Lord Commissioners of the Great Seal of England, &c. who noted the particulars at the Trial, at the bar of the King's Bench, 4th Car. I. (1628.) This eminent Lawyer's Notes are followed here, as closely as possible, in his own words.

‘ *Johan Norkott* having been murdered, the question was, How she had come by her death ? The Coroner's Inquest, on view of the body, and Depositions of *Mary Norkott*, *John Okeman*, and *Agnes* his wife, inclined to find JOHAN NORKOTT *Felo de se* ;—for the evidence persuaded the Coroner and Jury that she was found dead in her bed, the knife sticking in the floor, and her throat cut—that the night before, she went to bed with her child, her husband being absent—and that no other person, after she had gone to bed, came into the house—the Examinants lying in the outer room, and they must needs have seen or known if any stranger had come in. Whereupon the Jury gave up to the Coroner their *Verdict*, that she was *Felo de se*.

‘ But afterwards, upon rumour among the neighbourhood, and their own observation of a variety of circumstances, which manifested, that she did not, nor, according to those circumstances, could possibly murder herself—the Jury, whose *Verdict* was not yet drawn into form by the Coroner, desired that the Body, which had been buried, might be taken up out of the grave. The Coroner assented to their desire ; and THIRTY DAYS after her death, she was taken up, in presence of the Jury and a great concourse of people ; and, in consequence of what transpired, the Jury altered their former *Verdict*.

‘ The persons accused were tried at *Hertford Assizes*, and Acquitted ; but so much against the Evidence, that *Judge Harvey* expressed his opinion, that it were better an Appeal were brought, than so foul a murder should escape unpunished.

¹ *Rapin*, Fol. Lond. 1784, i. 221.

² *Hume's Hist. of England*, 8vo. Edin. 1805, i. 484. See also *Bened.*

Abb., p. 547. *Brompton*, p. 1151. *Mat. Paris*, p. 107.

³ See also *Gent. Mag.* (Sep. 1731,) i. 395. *Ellis's*

Brand's Popular Antiquities, ii. 543.

⁴ See *Howell's State Trials*, xiv. 1324. But especially *History of the Works of the Learned*, for the year 1739, Art. 12, to which curious publication *Sir John Maynard's Papers* were originally communicated by *Dr Rawlinson*.

‘ Accordingly, at the ensuing Easter term (*Pascha*, 4 *Car.*), they were tried on the Appeal, which was brought by the Young Child against his father, grandmother, and aunt, and her husband *Okeman*.¹ *The Minister of the Parish*² where the Murder was committed, deposed, “ That the Body being taken up out of the grave, *thirty days after the party’s death* ; and lying on the grafs, and the four defendants being present, *were required each of them to TOUCH THE DEAD BODY*. *Okeman’s* wife fell upon her knees, and prayed to God to shew a Token of her Innocency, or to some such purpose—her very words I have forgot. The Appellees *did touch the dead body* ;—whereupon *the brow of the dead*, which before was of a livid and carrion colour,³ begun to have a *dew or genile sweat* arise on it, which increased by degrees, *till the sweat ran down in drops on the face*. The brow turned to a *lively and fresh colour*, and the deceased opened one of her eyes and shut it again : And this opening the eye was done *three several times*. She likewise *thrust out the ring or marriage finger three times*, and pulled it in again ; and the finger dropped blood from it on the grafs.”

‘ SIR NICHOLAS HYDE, *Lord Chief Justice*, seeming to doubt the Evidence, asked the Witness, “ Who saw this besides you ? ” Witness. “ I cannot swear what others saw—but my Lord, (said he,) I do believe the whole company saw it ; and if it had been thought a doubt, Proof would have been made of it, and many would have attested with me.” The Witness observing some admiration⁴ in the auditors, he spake further. “ My Lord, I am Minister of the Parish, and have long known all the parties ; but never had any occasion of displeasure against any of them, nor had to do with them or they with me, but as I was Minister.—The thing was wonderful to me, but I have no interest in the matter ; but as called upon to testify the truth, that I have done.”—Whereupon, applying himself to the *Chief Justice*, he said, “ My Lord, my brother, here present, is *Minister of the next Parish adjacent*—and I am assured saw all done that I have affirmed.”

‘ Therefore that person was also sworn to give Evidence, and did depose, in every point, viz. *the sweating of the brow—the change of the colour—opening of the eye—and the thrice motion of the finger*, and drawing it in again. Only, the first Witness added, *that he himself dipped his finger in the blood which came from the dead body*, to examine it—and he swore *he believed it was blood* ! ”

Sir John Maynard adds, ‘ I conferred (my Notes) afterwards with *Sir Edward Powell*, Barrister at Law, and others, who all concurred in the observation—and for myself, if I were upon oath, can depose, that these Depositions (especially of the first Witness) are truly reported, in substance.’

‘ The other Evidence was given against the Prisoners, viz. the Grandmother of the Plaintiff, and against *Okeman* and his Wife—that they confessed they lay in the next room to the dead person that night, and that none came into the house till they found her dead the next morning ; therefore, if the did not Murther herself, they must be the Murtherers. To that end further proof was made.

‘ *First*, That she lay in a composed manner in her bed, the clothes nothing at all disturbed, and her child by her in bed.—*Secondly*, Her throat cut from ear to ear, and her neck broken ; and if she first cut her throat, she could not break her neck in bed, nor *contra*.—*Thirdly*, There was no blood in the bed, saving there was a tincture of blood on the bolster whereon her head lay—but no substance of blood at all.—*Fourthly*, From the bed’s head there was a stream of blood on the floor, which run along till it ponded in the hollows of the floor, to a very great quantity ; and there was another stream of blood on the floor at the bed’s foot, which ponded also on the floor, to another great quantity,—but no continuance or communication of blood of either of these two places from one to the other, neither upon the bed—so that she bled in two places severally : And it was deposed, (that on) turning up the mat of the bed, there were clotts of congealed blood in the straw of the mat underneath.—*Fifthly*, The

¹ The individuals on whose Depositions the original Verdict had been pronounced. ² ‘ A very reverend person, as I guessed, of about seventy years of age. His testimony was delivered gravely and temperately—but to the great admiration (*wonder, astonishment*) of the auditory.’ ³ ‘ That was the verbal expression, *in terminis*, of the Witness.’

⁴ Wonder, astonishment, amazement.

bloody knife was found in the morning sticking in the floor, a good distance from the bed; but the point of the knife, as it stuck, was *towards the bed*, and the *haft* or handle *from the bed*.—*Sixthly*, There was a print of the thumb and four fingers of a left hand. *Sir Nich. Hyde*, Chief Justice, said to the *Witnefs*, “How can you know the print of a left-hand from the print of a right-hand, in such a case?” *Witnefs*, “My Lord, it is hard to describe—but if it please that honourable *Judge* to put his left-hand upon your left-hand, you cannot possibly place your right-hand in the same posture.” Which being done, appeared so.

‘The Defendants had time to make their Defence—but gave no evidence, to any purpose.

‘THE JURY departed from the bar—and returning, *ACQUITTED Okeman*, and found the other three *GUILTY*; who, being severally demanded, “What they could say, why Judgement should not be pronounced?” said nothing—but (saying that) each of them said, “I did not do it! I did not do it!”

‘JUDGEMENT was given accordingly, and the Grandmother and the Husband executed; but the Aunt had the privilege to be spared execution, being with child.

‘I inquired if they confessed any thing at their Execution; but did not, as I was told.’

(iv.) THE next case which shall be mentioned, is that of *MARIOUN PEEBLES*,¹ *alias* *Pardone*, spouse to *SWENE*, in *Hildiswick*, who was, on March 22, 1644, sentenced to be strangled at a stake, and burnt to ashes, at *the Hill of Berrie*, for *WITCHCRAFT* and *MURDER*. Marion and her husband having ‘ane deadlie and venefical malice in her heart’ against Edward Halcro in *Overure*, and being determined ‘to destroy and put him down,’ being ‘transformed in the lyknes of ane pellaack-quhail,’ (the Devill changing her spirit, quhilk fled in the same quhail,) and the said Edward and other four individuals being in a fishing-boat, coming from the Sea, at the North-banks of *Hildiswick*, ‘on ane fair morning, did cum under the said boat, and overturnit her with ease, and drowned and devoired thame in the sey, right at the shore, when there wis na danger wtherways.’ The bodies of Halcro and another of these hapless fishermen having been found, Marion and Swene ‘wir sent for, and brought to see thame, and to lay thair hands on thame, ... dayis after said death and away-casting, quhaire thair bluid was evanished and defolved, from every natural cours or caus, shine, and run; the said umquhill Edward *bled at the collir-bain or craig-bane*, and the said ,² *in the hand and fingers, gushing out bluid thairat*, to the great admiration of the beholders—and revelation of the judgement of the *Almytie*! And by which lyk occasionis and miraculous works of God, made manifest in Murders and the Murderers; whereby, be many frequent occasiones brought to light, and the Murderers, be the said proof brought to judgment, conuict and condemned, not only in this Kingdom, also this countrie, but lykways in maist forrin *Christiane Kingdomis*; and be so manie frequent precedentis and practising of and tuitching *Murderis* and *Murdereris*, notourlie known: So, the foirfaid Murder and Witchcraft of the saidis perfons, with the rest of their companions, through your said Husband’s deed, art, part, rad,³ and counfall, is manifest and cleir to all, not onlie through and by the foirfaid precedentis of your malice, wicked and malishes⁴ practises, by Witchcraft, Confessionis, and Declarationis of the said umquill Janet Frazer, Witch, revealed to her, as said is, and quha wis desyrit by him to concur and assist with you to the doing thereof; but lykways *be the declaration and revelation of the justice and judgementis of God, through the said issuing of bluid from the bodies!*’ &c.

(v.) A SIMILAR and very remarkable instance is related in the following Trial: In the Dittay of *CHRISTIAN WILSON*, *alias the Lanthorne*,⁵ accused of Murder, Witchcraft, &c., (which is founded

¹ See *Dr Hibbert’s Hist. of Orkney*, &c. to which this remarkable Trial is appended.

² The name left blank.

³ Rede; advice.

⁴ Malicious.

⁵ The name given her at her baptism by the Devil. From *Collection of Original Documents*, belonging to the Society of Antiquaries of Scotland, MS. As a specimen of the other charges, take the following: “*William Richardstone*, in *Dalkeith*, having felled ane hen of the said *Cristianes* with ane stone, and wpon her sight therof did immediatly threatne him, and with ane frowneing countenance told him, that he ‘should never cast ane vther stone!’ And immediatly the said *William* fell into ane fraunie and madnes, and

upon the examinations of James Wilson, Abraham Macmillan, William Crichton, and Fyfe and George Erskine, &c. led before Sir William Murray of Newtoun, and other Commissioners, at Dalkeith, Jun. 14, 1661,) it is stated, that ‘ Ther being enimitie betuixt the said Chrifiane and Alexander Willfone her brother, and fhoe having often tymes threatned him, at lenth, about 7 or 8 monthes fince, altho’ the said Alexander was fene that day of his death, at three houres afternone, in good health, walking about his buffneffe and office; yitt, at fyve howres in that fame night, he was fownd dead, lying in his owne howfe, naked as he was borne, with his face torne and rent, without any appearance of a fpot of blood either wpon his bodie or neigh to it. And altho’ many of the neiboures in the tounne (Dalkeith) come into his howfe to fee the dead corpe, yitt fho newar offered to come, howbeit her dwelling was nixt adjacent thairto; nor had fhoe fo much as any feining greiff for his death. Bot the Minifter and Bailliffes of the towne, taking great fufpitione of her, in refpect of her cairiage, comandit that fhoe fhould be browght in; bot when fhoe come, fhoe come trembling all the way to the howfe—bot *fhoe refufed to come nigh THE CORPS or to TUITCH it*, faying, that fhoe “ nevir tuitched a dead corpe in her lyfe!” Bot being earnestly defyred by the Minifter, Bailliffes, and hir brother’s friends who was killed, that fhoe wold “ *bot tuitch the corpes fofilie*,” fhoe granted to doe it—but before fhoe did it, the Sone being fhyning in at the howfe, fhoe exprest her felfe thus, humbly defyryng, that “ as the Lord made the Sone to fhine and give light into that howfe, that alfo *he wald give light to difcovering of that Murder!*” And with thefe words, fhoe *TUITCHEING the wound of the dead man, verie faftlie*, it being whyte and cleane, without any fpot of blod or the lyke!—yitt *IMEDIATLY, whill her fingers was wpon it*, THE BLOOD RUSHED OWT OF IT, to the great admiratione¹ of all the behoulders, who tooke it for *discoverie of the Murder*, according to her owne prayers.—For ther was ane great lumpe of fleth taken out of his cheik, fo fnowthlie, as no rafor in the world cowld have made fo ticht ane incifionne, wpon fleth, or cheis—and ther wes no blood at all in the wownd—nor did it at all bleed, altho’ that many perfones befor had tuitched it, whill² fhoe did tuitche it! And the howfe being fearchd all over, for the fhirt of the dead man, yitt it cowld not be found; and altho’ the howfe was full of people all that night, ever vatching the corpes;³ neither did any of them tuitch him that night—which is probable⁴—yitt, in the morneing, his fhirt was fownd tyed faft abowt his neck, as a brechame,⁵ non knowing how this come to pafs! And this Cristian did immediatlie transport all her owne goods owt of her own howfe into her dowghter’s, purpofing to flie away—bot was therwpon apprehendit and imprifoned.⁷

(vi.) THE next instance which fhall be cited, refers immediately to the Case of THE MURES OF AUCHINDRANE; being an extract from a ‘ RELATIONE of quhat paff betuixt the Commitie⁶ and MR JAMES MITCHELL,’ &c.⁷ January 18, 22, and 24, 1676. In the course of the pleadings as to the lawfulness of inflicting Torture, the following interesting paffage occurs. “ Bot in this preparative, the practife is wnparalleled, to put a perfon to it be fuch a *Tortour*, to turne (contrarie the cowrfe of nature and expresse law of God) to be his own accufer; no, not in *Peiter Aroy*, the Highland Rober

tooke his bed, and newer rose agane, but died within a few dayes: And in the tyme of his sicknes, he alwayes cryed owt, that the said Cristiane wes present befor him, in the liknes of ane gray catt! And some tyme eftir his death, James Richardfone, nephew to the said Williame, being a boy playing in the said Cristiane her yaird, and be calling her *Lantherne*, shoe threatned, that ‘ if he held not his peace, shoe sowld cawse him to die the death his nephew (uncle) died of!’ Whairby it would appeare that shoe tooke wpon hir his nepheas (uncle’s) death.”

¹ Wonder; amazement. ² Until. That is, many previous trials had been made of other persons suspected, or of those who were near neighbours, perhaps living at enmity with the deceased, who had voluntarily offered themselves to this solemn ordeal, or had been called upon thus publicly to attest their innocence of his blood. ³ Holding the *lyke-wake*.

⁴ Can be proved, by testimony or probation. ⁵ The large collar which goes about a draught-horse’s neck.

⁶ Of the Estates of Parliament. ⁷ Wodrow’s MSS. as to ‘ the Sufferings,’ Adv. Lib. xxxvi. Quarto, No. 2. This Document relates to the Tortures used to *Mitchell*, who had been accused of an attempt to Murder, by shooting a pistol at *Archbishop Sharpe*, and the *Bishop of Orkney*, Jul. 9, 1668, &c. 29 Car. II, Jan. 7, 1677. See for the particulars of her Trial, *Salma. State Trials*, p. 331, &c.

and Murthrer ! Bot he, being legalie convicted himself, was put to *the Tortour*, to cause him declaire who was his confederats and affociats in committing of such horrid crymes. Bot if any man shall object that about THE LAIRD OF AUCHINDRANE, I answer : 1st, Thair is no paritie in the cawfe ; be-cawfe he was accused of an horrid and privat Murther, quhair thair was altogether penurie of Witneffes, and not of a deutie contraverted be Apostats : 2dly, GOD, in a foveraine and singular way, *witnesed it from Heaven, by his own immediate hand, and proved the Deed against him !* viz. the Corpes of the man Murthered, being buried in *Girvane Kirk-yard*, as a man cast away at sea, and cast owt thaire, *the Laird of Coleaine*, whose servant he had beine befor, driming¹ of him in his sleipe, and that he had a muse-marke wnder his left pape ;² and when he awook owt of his sleipe, wpon searck, found it to be trwe—came to the place, and taking wpe the Corpes owt of the place quhair they were buried, found him to be Murthered. Wpon which, he *sumoned in all the men in that pairt, to touch the Corpes, as the custum was in such cafes* ; and all compeiring, except the saids Laird and his son, who were the Murtherers ; and his dwelling house and familie being neire to the place, *ane young chyld of his, MARIE MURE be name*, feing the people, went to the place ; and *when she drew neire to the Corpes (to the admiration of all the people,) did spring owt wpon her in abundance of blood !* Wpon which they were apprehended and put to tryell.”

(vii.) A VERY singular incident is related by *Law*, in his ‘*Memorials*.’³ Two men having been executed at Glasgow, Jun. 14, 1683, for the Murder of a gentleman (David Monroe) at Inchbelly-bridge ; in consequence of the enormity of the offence, their bodies were appointed to be hung up in irons. For this purpose, the bodies of the Criminals were conveyed to the spot, where, according to the terms of the Sentence, they were to be gibbeted. *Law* relates, that “*Though their entrails were taken out, and their bodies cleansed from all blood, yet when it (the body of one of the culprits) came to the place where the Murther was committed, did gush out in blood, in the arm which was cut ; teitified to be a truth by the beholders ; which was a testimony of their guilt !*”

(viii.) OF a like nature with the last instance, a strange story is told in the *Biographia Scoticana*, which has likewise been elsewhere repeated. That a few days after Mr James Guthrie was executed, and his head placed upon the Netherbow Port of Edinburgh, *Middleton’s* coach coming down that way and passing through the Port, *several drops of blood fell from the head upon the top of the coach ;*—which, as the legend goes, ‘*all their art and diligence could not wipe off !*’ Physicians were called, and desired to enquire if any natural cause could be given for this event—but they could give none ! “*This odd incident being noised abroad, and all means tried, at length the leather was removed, and a new cover put on ! ! !* But this was much sooner done, than the wiping off the guilt of this great and good man’s blood upon the shedders of it, and the disgrace from this poor Nation !”

(ix.) FEW instances of this description are entitled to the consideration which the following Case possesses, as well in a legal as in a philosophical point of view. In the very remarkable Scottish Trial of PHILIP STANFIELD,⁴ for *Parricide*, (executed Feb. 15, 1688,) the circumstance of the body of Sir James Stanfield of Newmills, who was Murdered near Haddington, in Dec. 1687, *having bled on the touch of his son Philip, the Parricide*, was urged and argued with the utmost earnestness, in Court. *James Muirhead*, Surgeon, one of the Witnesses, swore, that “*upon the prisoner’s affisting to lift the body of his deceased father, Sir James Stanfield, after it had been sewed up,*⁵ and clean linen

¹ Dreaming.

² A mouse mark under his left breast.

³ *Law’s Memorials*, p. 252.

⁴ See *Howell’s*

State Trials, XI. 1371.—*Salmon’s* State Trials, p. 610.—*Fountainhall’s* Decisions, I. 484.—See also *Fountainhall’s* Diary.—*Arnol’s* Criminal Trials, p. 33, Note.

⁵ The body had been opened and examined, by *Judicial* authority, for the purpose of determining the precise cause of the deceased’s death. The surgeons to whom this remit had been granted, reported, that Sir James had died from *strangulation*, not from drowning—and that the idea of *felo de se*, which had been attempted to be proved by the son, was utterly impossible.

put on, it DARTED OUT BLOOD *through the linen, from the left side of the neck, which the pannell TOUCHED*—but, that when he (the Witness) and the other Surgeon, *James Crawford*, put on the linen, and stirred and moved the head and neck, before, *he saw no blood at all!*"

This fact was corroborated by other Witnesses—and it is, perhaps, worthy of notice, as the most striking peculiarity of that Case, that Sir James had not been stabbed, shot, or assassinated by the cutting of his throat—but was *strangled*, and then thrown into a water; so that there was no *external wound* on the neck.

A singular feature in this Case of Stanfield, is the rank and emiuece of the Public prosecutors, *Sir John Dalrymple*, younger of Stair, *Sir George Mackenzie*, and the gravity with which these superstitious circumstances are argued. The Dittay states, "When his father's dead body was sighted and inspected by Chirurgions, and the cleir and evident signs of the Murder had appeared, the body was sewed up, and most carefully cleaned; and his nearest relations and friends were desired to *lift* up his body to the coffin: And accordingly, *James Row*, merchand (who was in Edinburgh at the time of the Murder), having lifted the left side of Sir James, his head and shoulder, and the said *Philip* the right side; his father's body, though carefully cleaned, as said is, so as the least blood was not on it, did (ACCORDING TO GOD'S USUAL METHOD OF DISCOVERING MURDERERS) *blood afresh upon him, and defiled all his hands*; which struck him with such a terror, that he immediately let his father's head and body fall with violence—and fled from the body!—And, in consternation and confusion, cried, *Lord, have mercy upon me!*—and bowed himself down over a seat in the Church, (where the Corpses was inspected,) wiping his father's innocent blood off his own murdering hands, upon his cloaths!" But as the arguments are fortunately preserved, and as they shew many of the peculiarities of these superstitions, and give the reasonings of the most eminent Lawyers of that time, it may be proper, and can hardly fail to be interesting, even to the general reader, to enter a little into details.

Sir Patrick Hume,² Counsel for Philip Stanfield, urged, that this is but a superstitious observation, without any ground, either in Law or reason. And *Carpzovius* relates, *Part 3, quest. 122, no. 31*, that several persons had been unjustly challenged, and that he, in his own experience, had *seen a dead body bleed*, in presence of the person who was *not guilty!* And *Matheus de Criminibus* is of the same opinion, Tit. 16, *de questionibus*, num. 12, "de sanguine porro de *Cudavere* profluente, quod dicitur id de plurimis experimentis comprobetur, tamen cum experimenta falsa sint—ratio vero idonea nulla reddi possit, non putaverim iudicium ad Torturam sufficiens esse, non enim sapientis Judicis est incerto experimento credere, quod certa ratione dirimendum est." And the truth is, *the occasion* of the dead body's bleeding was, that the Chirurgion that came out to visit the body did make an incision about the neck, which might be the occasion of the bleeding;—and also the very moving of the dead body, when it was taken out of the grave and out of the coffin, might occasion the bleeding; especially, seeing the body did not bleed for some time after, which certainly was made by the motion and by the incision: As also, a further evidence that it could not be the defender's *touching* the body, the Chirurgions did lykewais touch the body, as well as he, and several others present; so that the bleeding could no more be ascribed to *his touching*, than the touching of the other persons present.

Sir James Dalrymple, Lord Advocate, answered, that "although the deceased's servants had made a *mutiny ament the Burial, till the Corps were sighted*, yet the pannell caused bury the Corps that same

¹ This may, no doubt, have been resorted to, for the purpose of proving Philip's participation in the Murder—but, of itself, this ceremony is still universally observed in the middle and lower ranks of life; and is a most affecting spectacle to those who are so deeply interested. It is called "the chesting" or "coffining" of the corpse—a duty almost never (in Scotland) intrusted to hirelings—but is most solemnly performed by the nearest relations, as the last endearing act of respectful and affectionate regard, which they can offer, to the breathless remains of those who had been nearest and dearest to them. ² Along with this gentleman were Sir David Thoirs, Mr William Moniepenney, and Mr William Dundas, as counsel for the prisoner.

night! without shewing them!" After Warrant for raising the body had been obtained, the inspection by Surgeons, and the touching, as before detailed, took place; when the pannel let his father's head fall to the ground, and cried out, O God!—and ran away and went to a desk in the Church, where he lay groaning and in confusion, and durst never return to touch the Corpse. And that as there could no *natural* reason be given, but an ordinar and *wonderful Providence of God in this kind of discovery of Murder*, so the fact was never more evident and sure. Though half a dozen of persons were bearing the Corpse, *no man's hands were bloody but the pannels!* That the Corpse being two entire days in the grave, in that weather and season, the blood, by the course of nature, was become stagnant and congealed—so that the former tossing and lifting of the Corpse, and even the incision itself, had occasioned no such effusion, but only some water or gore—but upon *the first touch* of the pannel, *the Murderer*, there appeared *abundance of liquid florid blood!*

Sir David Thoirs, in reply, argued, that the falling of blood from the wound could neither be a ground nor presumption for guilt—and though the pannel was *surprised* to see his father's blood, yet the same did only proceed from *natural duty and affection*, and not from any apprehension of guilt! *Sir Patrick Hume* added, that he offered to prove, that *the pannel had touched his father's body before the incision*, AND IT DID NOT BLEED.

Sir George Mackenzie, in his address to the Jury, asserts that 'GOD ALMIGHTY *himself was pleased to bear a share in the testimonies which we produce; that Divine power which makes the blood circulate during life, has oft-times, in all Nations, opened a passage to it, after death upon such occasions,—but most in this case!*

The sentence of the Court was, that he should be 'hanged on a gibbet till he be dead—and his tongue to be cut out and burnt upon a scaffold—and his right hand to be cut off and affix on the East Port of Haddingtoun—and his body to be carried to the Gallowlee, betwixt Leith and Edinburgh, and there to be hanged up in chains,' &c.

(x.) BESIDES the class of notices which has already been afforded, it is natural to expect that vestiges of so prevalent a superstition should appear in the ancient Popular Poetry of all Nations. The Editor's present leisure and opportunities do not admit of his entering upon so wide a field as that just alluded to, for the illustration of such an enquiry. It is sufficient to mention, generally, that such traces do appear in the Ballads of Scotland, England, Germany, and other European Nations. The ancient Romance also, and the Drama of all these countries, abound with allusions to this superstition; and some of them make use of the ceremonial of touching the Corpse, as a powerful aid in exciting the feelings, and in heightening the interest of the reader, or auditory.

As a specimen of one of the Scottish Ballads illustrative of this superstition, the Editor may cite the conclusion of the Romantic Ballad of *Young Huntin*, or *Earl Richard*,² as it is too long for insertion at length:—

"PUT na the wite³ on me," she said,
 "It was my may⁴ Catherine!"
 Than they hae cut baith fern and thorn,
 To burn that maiden in.—

'It wadna tak upon her cheik,
 Nor yet upon her chin,
 Nor yet upon her yellow hair,
 To cleanse the deidly sin!

¹ The same night the body had been found in the water, having been incrustated with frozen ice, owing to the inclemency of the season; the Murder having been perpetrated in the month of December, during a storm. ² See *Minstrelsy of the Scottish Border*, II., 420—*Herd's Ballads*—*Chambers's Ballads*, &c. ³ Blame. ⁴ Maiden.

‘ *The Maiden touch’d the clay-cauld Corpse,
A DRAP IT NEVER BLED;
The Lady laid her hand on him,
And soon the ground was red!*

‘ Out they hae ta’en her, may Catherine,
And put her mistress in.
The flame tuik fast upon her cheik,
Tuik fast upon her chin,
Tuik fast upon her fair bodye—
She burn’d like hollin green!’¹

(xi.) BEFORE concluding these notices, it may be remarked, for the benefit of the curious inquirer into the superstitions of his native country, that absurdities greater by far than this Test or Ordeal have been gravely stated and maintained, even before the Supreme Criminal Tribunal of Scotland. Perhaps the most extraordinary instance of this description occurred in the *Trial of THE MARQUIS OF ARGYLL*,² before Parliament, 1661, where the Indictment, after setting forth a variety of alleged Murders and cruelties, proceeds, ‘ That THE LORD from Heaven did declare his wrath and displeasure against the aforefaid inhumane crueltie, by striking the tree whereon they³ were hanged in the said month of June, being a lively fresh growing ash-tree, at the Kirk-yard of *Dunoone*,⁴ among many other fresh trees with leaves. THE LORD struck the said tree immediately thereafter, so that the whole leaves fell from it, and the tree withered, never bearing leaf thereafter, remaining so for the space of two years; after which, being cut down, there sprang out of the very heart of the root thereof a *spring like unto BLOOD, popling up, running into several streams all over the root; and that for several years thereafter*,⁵ till the said Murderers or their favourers, perceiving that it was remarked by persons of all ranks resorting there to see this *Miracle*, they caused hock out the root,⁶ covering the whole with earth, which was full of the said matter like blood!’

There cannot be a doubt that the foregoing Case, monstrous and shocking in the extreme as it is, is merely an *improvement* upon the popular Superstition we have been considering; and the inference they wished to deduce from the whole matter is,—that ‘ *blood will have blood*,’—that God will not suffer Murder to pass over unavenged, even in this world;—and farther, that if man fails to discover guilt, the Almighty will, by *extraordinary* and even *miraculous* means, disclose the Murderer’s horrid secret.

¹ Green holly. ² *State Trials*, (old Edit.) III. 422, and VII. 379.—*Howell*, XI. 1380. ³ The persons thus mercilessly murdered by the commands of Argyll, and massacred by his followers, were thirty-six in number; who were hanged on this single tree, being ‘ special gentlemen of the name of *Lamond*, and vassals to *Sir James Lamond* of Inverin,’ (that Ilk.) And on the same day, they ‘ Murdered with durks, and cut down with swords and pistols,’ a number of other unhappy creatures, among whom *John Lamond* in Auchinshallach, ‘ who being about the age of fourscore years, &c. they most cruelly and barbarously stabbed with *durks* and *skanes* at the ladder-foot.’ *The Provost of Rothesay* was shot through the body thrice, yet finding some life in him, they thrust at him with durks and skanes, and at last cut his throat with a long durk; others they cast into holes, their victims ‘ spurning and wrestling, whilst they were suffocated with earth; having denied to them any time to recommend themselves to God!’ These are part of the atrocities of the Marquis’s followers, detailed in the remarkable Dittay above alluded to; and besides this, they murdered and massacred a number of innocent *women*, and inhumanly left their bodies as a prey to ravenous beasts and fowls, and ‘ young and old, yea suckling children, some of them not one month old!’ The reader is referred to the *State Trials* for other particulars, which are too circumstantial to be enumerated here. ⁴ An ancient Castle on the Clyde, of which the Family of Argyle are still the nominal heritable Keepers. It has long since been razed with the ground. The *Dun*, on which it was situated, has a very peculiar and commanding form, and is a beautiful and picturesque object from the opposite coast, and from the river. The ‘ Kirk-yard’ is still surrounded by lofty trees. ⁵ *Ovid’s Metamorphoses* are a trifle to this; but still such execrable and almost blasphemous ravings were not only tolerated, but gravely discussed before Parliament! It ought, however, to be kept in mind that the fanaticism which then prevailed had a large share in producing this gross and shocking exhibition, which can only be viewed as solemn mockery of all judicial proceedings, and indeed of every thing sacred. ⁶ Dig up; extirpate.

Slaughter — Shooting of Pistolets, &c.

Jul. 24.—ALEXANDER DUMBAR, Younger of Kilbowak;¹ Robert Dumbar, his brother; Niniane Dumbar, sone to Williame Dumbar of Hemprigis; James Dumbar, sone to Gawin Dumbar, Archedeane of Murray; Thomas Falconer, seruitour to the said Alexander.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Alexander Dumbar of Waistfield (Scheref of Murray); committit the first day of Junij last: And contraveining of the Actis of Parliament, in beiring and schuiting of pistolettis, &c.

PERSEWARIS.

Johnne Dumbar of Waistfield, as brother to the defunct; Sir Thomas Hammiltoun.

PRELOCUTOURIS for the Pannell.

Mr Johnne Ruffell, Mr Thomas Hoip, Mr Thomas Nicolsoun, Aduocatis; the Constable of Dundie, elder, the Laird of Monymusk, the Laird of Halkertoun.

The Justice, of consent of ather parteis, continewis this dyet to ffryday nixt. The Affyse wairnit *apud acta*, ilk persone, vnder the pane of twa hundreth merkis.

(Jul. 26.)—The Justice continewis this dyet, as ofbefoir, with consent of ather partie, to Wednsfday nixt, &c.

(Jul. 31.)—The persewar passis *simpliciter* fra the persute of the persones on pannell; and is content that thai be put to libertie. Quhairupoune the pannell askit instrumentis.—Compeirit Patrik Dumbar of Blarie, and producet the Counfallis Warrant to the Justice, quhairof the tennour followis.

WARRANT for the Dumbaris libertie.

JUSTICE, Justice Clerk, and your deputis: Quhear as, Alexander Dumbar of Kilboyak,² (&c.) are to be presentit befor 3ow this present day, to vnderly the lawis for pe slauchter of vmq^{le} the Scheref of Murray: And We, vnderstanding that pe partie persewar will nocht insist in the persute of pir persones, bot ar content and will consent that pai be put to libertie and fredome: Thairfoir 3ow fall tak guid caution of thame, that pai fall compeir befor his Maiesteis Justice, the thrid day of pe nixt Justice-air of the scherefdome quhair pai duell,³ or soner vpone a fyftene dayis wairning, and vnderly pe law for the Slauchter foirfaid; vnder pe panes contenit in the Actis of Parliament: And this caution being fund, 3ow fall put them to libertie and fredome, and suffer pame pas quhair pai pleis: Quhairanent pir presentis fall be your Warrant. AT EDINBURGH, the last day of Julij, 1611.

AL. CANCELL^s. JO. PRESTOUN.

Patrik Dumbar of Blarie and Robert Falconer of Ballandro became cautione for thame, coniunctlie and feuerallie, to the effect aboue writtin.

THE Justice, according to the directioun of the former Warrant, ordanit the saidis persones on pannell to pas frie, and nocht to returne to the said Tolbuthe furth of the quhilk thai war brocht. Quhairupoune Alexander Clerk, ane of the Bailleis of Edinburgh, askit instrumentis.

¹ See Jul. 31, 1616.

² The rest of the names are recited.

³ Elgin.

Egyptians remaining within the Kingdom after Proclamation.

Jul. 31.—MOYSES FA, DAVID FA, ROBERT FA, and JOHNNE *alias* WILLIE FA, EGIPTIANIS.

Dilaittit for Abyding and remaining within this Kingdome, they being Egiptianis; contrair the tennour of the Actis of Parliament.

THE ÆGIPTIANIS DITTAY.

MOYSES FA, DAVID FA, and JOHNNE FA, 3e ar indytit and accuset; That quhair, be Act of Parliament haldin at Edinburgh the xxiiij day of Junij, the 3eir of God Im.Vjc. and nyne 3eiris, it was statute and ordanit that all the vagabundis, soirneris² and cownone thevis, cownonlie callit EGIPTIANES, sould haif past furth pairof, and nevir returnet within pe samyn, eftir pe first day of August, the soirfaid 3eir of God Im.Vjc. and nyne 3eiris, vnder the pane of deathe: And that it sould be leifum to all his Maiesteis guid subiectis, or ony of thamé, to caus tak, apprehend, impriffone, and execute to death, all maner of Egiptianis, alswell men as wemen, as cownone, notorius, and condempnet Thevis, only to be tryit be ane Assyse, that pai ar callit, knawin, repute, and haldin in³ Egiptianis: NOCHTPELES, 3e and ilk ane of 3ow being vagabundis, soirneris, cownone thevis, repute, callit, and haldin Egiptianis, in contempt of his Maiestie and his Lawis, hes presumet to remane in this Kingdome, and hes nocht depairtit and abiddin furth pairof, sen pe said first day of August, pe 3eir of God Im.Vjc. and nyne 3eiris soirfaid; bot be the contrair, 3e and ilk ane of 3ow hes remanet within this Kingdome, in contempt of pe said Act of Parliament, and ar notorioullie knawin to be Egiptianis, and sua repute and haldin: And pairfoir 3e and ilk ane of 3ow aucht to be demanit to pe death, and suffer pe panes pairof; conforme to the said Act of Parliament.

PERSEWAR, Mr Robert Foulis, substitute to our souerane lordis Aduocat.

The Pannell, viz. Moyfes Fa, producet ane Licence, grantit to him be the Counsell; quhilk the Aduocat acceptis, *in quantum*.—It is allegit be the Aduocat, that the conditiones specifeit in the Licence grantit to Moyfes Fa is nawayis keipit be the pannell, viz. that he sould find cautionn for fulfilling the perticular injunccionnes specifeit in his Licence: Quhilk cautionn,⁴ for his nocht entrie afoir⁵ the Counsel, is vnlawit in the pane and penaltie of ane Thowseand pundis; and the cautioner being charget for payment to the Thesaurer of the said penaltie, hes past to the horne: And thairfoir, in respect of the wordis of the Act of Parliament, and of the nocht payment of the penaltie, as also in respect that the conditiones specifeit in the Licence is nocht keipit, the said Moyfes Faw hes fallin vnder the danger of the said Act of Parliament, and the pane of daith inflictit vpon him; and the remanent perfones, his complices, aucht and sould be pyneist to the daith, conforme to the said Act: And protestis for Wilfull Errorr aganis the Assyse, gif thai acquit, according to the said Act: And produces the Counfallis Act contrair the cautioner, quhair he wes vnlawit in the sowne;⁶ togidder with the Letteris of Hoirning vset aganis him: And repeittis the Deposition of James Ballache, testifeing the said Moyfes being in companie and societie with the Egiptianis, and of his geving Band to the said James, for redressing of dyuerse Thiftis: And repeittis the Act of Parliament to the Assyse.

¹ See Jul. 19, 1616.
surety. ⁵ Before.

² Who forcibly take free quarters, &c.

³ As.

⁴ Cautioner;

⁶ The sum or amount.

THE Justice, nochtwithstanding of the allegiance proponit be the said Moyfes Fa, vpon the pretendit Licence producet be him; and in respect of the answeris maid thairto be the Aduocat, referrit the samyn Dittay to the knowlege and tryell of ane Assyse.

VERDICT. The Assyse all in ane voce, be the mouth of Williame Murehead, mercheand burges of Edinburgh, chancellor, stand, pronuncet, and declairit the saidis Moyfes Fa, David Fa, Robert Fa, and Johnne *alias Willie* Fa, notoriouſlie knawin to be Egiptianis, at the leift sua repute and haldin, to be ffylit, culpable, and convict of contravening the tennour of the said Act of Parliament, in thair contemptuous remaining and abyding within this kingdome, continuallie, ſen the said firſt day of Auguſt, in the foirſaid yeir of God I^m. ſax hundreth and nyne yeiris, expreſ contrair the tennour of the said Act.

SENTENCE. To be tane to the Burrow-mure of Edinburgh, and thair to be hangit quhill thai be deid: And all thair moveabill guidis and geir pertening to thame, to be eſcheit and inbrocht to our ſouerane lordis uſe, as culpable and convict, &c.

Abiding from the Raid of the Iſles.

Sept. 17.—JOHNNE M^cMILLANE in Merkelloch, Johnne M^cMillane in Bank, and Cuthbert M^cmillane in Drumreiſche.

Dilaitit for contravening of his Maieſteis Proclamatioun, maid in the yeir of God I^m.Vj^c. and aucht yeiris, in nocht paſſing forward with his Maieſteis Lieutenant to the Raid of the Iſis.

For releif of thair Cautioneris, and in respect that thai thame ſelfis ar na ffriehalderis nor landit gentilmen, haifing nather landis nor rentis, bot ar removeable Tennentis, and ſa nocht comprehendit vnder the ſaidis Proclamatioun, thay thairfoir compeirit this day and place, in the hour of cauſ, and offerit thame ſelfis to the Tryell of the Law, and to vnderly the rigour thairof, gif it war fund that thai war ony wayis comprehendit vnder the ſaid Proclamatioun: And forder, offerit to mak the Kingis Maieſtie assignay to thair haill landis and heritages within this realme, gif thai ony had, at that tyme. In respect of the quhilk premisses, and of thair compeirance this day and place, in the hour of cauſ, and offer maid be thame in maner aboue ſpecifeit, thay Proteſtit for thair cautioneris releif; and that thai ſould onnawayis be callit, charged, or trubillit for the ſaid allegit cryme in ony tyme cuming.

Reſſet and Intercommuning with Mr Alexander Ruthven, &c.— Gowrie Conſpiracy.

Nov. 7.—DAVID SPALDING of Effintullie.

Dilaitit of the treſſonable Reſſet and Intercowmoning with Mr Alexander

Ruthven, sone to vmq^{le} Alexander Ruthven of Freland, and suppoirting of him with money and vther intertenement, he being his Maiesteis declairit Tratur, fforfalt in Parliament, and fugitiue, for airt and pairt of the treassonable assist-ing and pairt-taking with JOHNNE, funtyme ERLE OF GOWRIE, Alexander Ruthven his brother, in the treffonable Conspiracie devyset aganis his Maiestie, at Perth, vpon the fyft day of August, 1600 yeiris.

THE Justice continewis this dyet to the fourt day of Marche, quhilk is the first Wednisday thair of : And ordanit the defender to find caution for his compeir-ance that day. *Plegio, Johanne Spalding de Innerrydray.*

PRELOCUTOURIS for the pannell, Mr Thomas Nicolfoun, Mr Andro Aytoun.

(Mar. 4, 1612.)—My Lord Advocat desyres that this mater may be continewit to the tuentie day of Maij nixtocum, in respect that, be his Maiesteis Letter, directioun was gevin that probatioun sould be ministrat to the Assyse, of the pannellis giltines of the fact lybellit : And that, in the meane tyme, his Maiestie may be acquentit with the informeris flaknes in the perfute.

THE Justice continewis this matter to the tuentie day of Maij nixtocum. *Plegio, ut supra.*

PRELOCUTOURIS in defence.

Mr John Ruffell, Mr Andro Aytoun, Mr Thomas Nicolfoun, Mr James Oliphant.

(Maii 20, 1612.)—Compeirit Sir Thomas Hammiltoun of Byres, kny^t, Aduocat to our souerane lord, and declairit, that informatioun was gevin to him be his Maiestie, to follow furth this perfute aganis the pannell, his Informeris furneissing probatioun in that matter, vtherways to desist : And in respect na diligence is vset be the Informeris in this eirand, for fortherance of this perfute ; he thairfor declairit, that he wald nocht insist in perfute of the pannell, at this tyme, bot desyret that the dyet sould desert.—Quhairupoun the pannell and his prelocutouris askit instrumentis, and protestit, that he be nocht callit, charget, or perfewit for the crymes aboue specifeit, in ony tyme cuming. And nochtwith-standing of the premisses, in respect of his innocence of the saidis allegit crymes, as he affirmet, offerit him selff instantlie to the tryell of the Law, dislassenting to all maner of continuatioun ; protesting also, that na Letteris be direct aganis him for the said Cryme in tyme cuming ; becaus this is the fourt dyet keipit be him in this matter.

Slaughter.

Nov. 8.—JOHNNE FARQUHARSOUN of Innerchald, Allaster Farquharfoun, his brother, Donald Farquharfoun younger, Allaster Farquharfoun, his brother, James Farquharfoun in Achalater, Johnne Robertfoun of Straloch, *alias Barrone Reid*, Johnne Gairdin in Balliemoche, Findla Farquharfoun in Glenylay.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} James Clerk in Auldranie ; committit in anno 1610 yeiris.

Compeirit Thomas Sinclair indueller in Edinburgh, and Robert Auchinlek, wryter, as procuratouris, speciallie constitute be Elspeth Kow the relict, and be Andro Howie, now hir spous, for his entreis ; and be vertew of the Letter of Procuratorie grantit to thame, of the dait at Aberdene the third day of November instant, subscryuit be James Davidfoune and Mr Andro Clerk connoteris,¹ in name, and at command, of the said Elspeth and hir spous, past simpliciter fra the persute of the haill persones on pannell, &c.

The pannell protestis that thai nor nane of thame be callit or persewit for the said allegit slaughter in ony tyme cuning.

Slaughter—Stouth-reif—Shooting of Culverings, &c.

Nov. 27.—WILLIAME FORBES of Monymusk.

Dilaitit, accuset, and persewit off the crymes following, viz.

FORSAMEKILL as vpon the nynt day of Maij, the 5eir of God I^m. Vc. fourfoir 5eiris, vmq^{le} Alexander Menzeis, sone to vmq^{le} Gilbert Menzeis of Culrie, Proveist of Aberdene, being directit be the said vmq^{le} Gilbert Menzeis of Culrie, his father, to vissie² ane Halk-nest appointit be him to haif bene keipit and preferuet to our souerane lordis vse and plesoure,³ within the Craig⁴ of Findoun, pertening heritabillie to the said Gilbert Menzeis, oy⁵ to the said vmq^{le} Gilbert Menzeis of Culrie, lyand within the Scherefdom of Kincairdin ; the said vmq^{le} Alexander Menzeis, eftir visitatioun of the samyn, and that he had ordanit the tennentis of the saidis landis of Findoun to geve earnestt attendance to the keiping of the said halk-nest⁶ for his Maiesteis vse, as said is ; he being in fober and quyet maner returne- and thairfra, cumand agaitwardis to the burgh of Aberdene, trusting in the meane tyme na inquieta- tioun, truble, harme, nor iniurie to haif bene done to him, be ony persones ; bot to haif frelie past furth the hie way, as his lienes frie subiect, in respect that he had offendit na man, nather be word nor deid : Neuertheles it is of veritie, that the said Williame Forbes of Monymusk, accompaneit with Alexander Robertfoun, Thomas Dik, and Mylne, then his servandis, and vtheris thair complices, with convocatioun of our souerane lordis legis, to the number of aucht persones, or thairby ; bodin in weir- lyk maner, with secreitis,⁷ steil-bonettis, gantiletis, suordis, culveringis, and pistolettis, expresse prohibeit to be borne, worne, vsed vpon thair persones or in thair companeis, privatlie or oppinlie, outwith houffis, or felkote with, be the Actis of Parliament, vnder the panes thairin contenit ; vpon the said nynt day of May, the yeir of God foirsaid, the said Williame Forbes, with his complices, came tym- oullie in the moirning, befor the sone-ryfeing, to the Cairne⁸ of Loriestoun, lyand within the sche- refdom foirsaid, quhair thay darnet⁹ thamefelffis, maist obscuirlye, behind the said Cairne, with thair

¹ Co-Notaries.

² Inspect.

³ King James VI., like many others of his ancestors of the Royal House of Stuart, was passionately fond of the sport of Hawking, and appears to have spared no expense in procuring the finest breeds, from various parts of Scotland (chiefly from the North of Scotland and from the Western Islands and Orkney.) The choicest kinds seem to have been brought from Denmark and Norway ; and, in many instances, the Falconers, who had trained them in those countries, were taken under the King's immediate protection and patronage.

⁴ Craig, a precipitous rock or crag.

⁵ Grandson ; *oe*.

⁶ The books of the Lord High Treasurer abound with entries of payments to men ' for watching a halkis-nest' at such a place, so as to secure the brood, and give timely notice when they were fledged and ready to take wing.

⁷ A shirt of chain-mail, secretly worn under the ordinary dress.

⁸ A heap or pile of stones, commonly erected on an eminence, which marks the place of sepulture of some remarkable persons. Cairns were often reared to preserve the memory of a remarkable Murder, &c.

⁹ Concealed ; hid.

charget culveringis, placet vpone restis,¹ awaiting the said vmq^{le} Alexanderis bycuming, for his slauchter : Lyk as, thay lay at await for his slauchter behind the said Cairne, continuallie, fra befor the foueryfeing, quhill about aucht houris in the moirning ; till at last, haifing perfauet the said vmq^{le} Alexander foliter, him self allane, in sober and quyet maner, cumand by the said cairne, thay, af thair restis, discharget thair culveringis at him, or euir he was circumspect of thame ; and thairwith schote him throw the heart and body with tua bullettis ; and thairby, maist schamefullie, crewallie, and vnmercifullie slew him, upone set purpois, prouisioun, be way of Brigancie,² in vmbefetting the hie way, and floirthocht fellonie : AND nocht being satisfeit thairwith, thay feing him fall doun deid with the said schote, thay incontinent thaireftir ruschet fordwaris to him, and with thair fuordis and quhingeris maist schamefullie, crewallie, and tirannoullie gaif the said Alexander nyne bludie woundis about his heart, nochtwithstanding that thay had persanet him lyand deid and flane be thame of befor : AS ALSO, at the samyn tyme, be way of stouthreif, staw,³ rest, and away tuik with thame his fuord, quhinger, cloik, and uther graith being vpone him ; had and convoyit the samyn with thame, and disponit thairupoun at thair plesour : And the said Williame Forbes of Monymusk is airt and pairt of the said crewall Slauchter of the said vmq^{le} Alexander, and of the Maisterfull stouth-reif of his fuord, quhinger, cloik, and vtheris aboue writtin. FOR the quhillis, and for contravening the tennour of the said Act of Parliament, in beiring, weiring, and schuiting of the saidis Culveringis, dagis, and pistolettis, he aucht and could be puneist, conforme to the Lawis of this realme.

PERSEWARIS, Gilbert Menzies of Pitfoddellis, as eldest brother-sonne ; Sir Thomas Hammiltoun of Byres, kny^t, Aduocat, &c. ; David Menzeis of Tilliepowreis, as brother.

PRELOCUTOURIS in defence, My Lord of Mar, My Lord of Moirtoun, Mr Thomas Henderfoun, Mr Alexander Peiblis, Mr James Oliphant, Aduocattis.

Efter the reiding of the said Dittay and accusatioun of the said Williame Forbes of the saidis crymes, the Aduocat, with the pairteis persewaris aboue writtin, his informeris, befor all forder proces, past fra that article of the Summondendis anent the ‘ Stouth-reif,’ *pro loco et tempore* : As also declairit, that he wald nocht insist vpone that woird of the Dittay beiring ‘ foirthocht fellonie :’ And adherit allanerlie⁴ to the Slauchter and committing thairof, in maner contenit in the Dittay, be schottis of hagbuttis and pistolettis ; and in beiring and weiring of the saidis hagbuttis, contrair the Actis of Parliament : Quhairvpone instrumentis was tane be the said Williame Forbes of Monymusk and his prelocutouris ; quha, nochtwithstanding thairof, offerit thame selfis reddie to defend for the saidis crymes past fra. And as concerning the Slauchter aboue writtin and remanent crymes lybellit, allegit that the Justice could not put the samyn to the Tryell of ane Assyse, becaus nocht only had the said Williame obtenit tua feuerall Letteris of Slanes fra tua of the brether to the defunct, in respect of thair satisfacioun contenit thairin ; bot also, the Kingis Maiestie, of his speciall grace and mercie, hes, be his Letteris of Remissioun, pardonit and remittit the said Williame Forbes of Monymusk for the saidis crymes : And for verificatioun

¹ When the culvering or musket was first introduced, the barrel was so heavy as to require a separate staff, called a *rest*, from which a deliberate aim could be taken. The circumstance of the culverings being placed upon their rests, is noted as an aggravation of the crime, and a strong proof of the malice of the parties. Specimens may be seen in *Grose*, or in the more recent publication of *Meyrick* on Ancient Armour, &c.

² Fr. *brigand, brigancie*.

³ Stole.

⁴ Alone ; only.

thairof, producet tua feuerall Remiffiones, baith vnder the Grit Seill ; the ane, for the Slauchter aboue writtin, daitit vpone the xxvij day of Junij laft, and the vther, daitit vpone the first day of August laftbypaft, for beiring and weiring of the hagbuttis and piftolettis ; and vpone the production thair of askit instrumentis. To the quhilkis Remiffiones, and his Maieftis pardoun fet down thairin, the faid Williame Forbes tuik him felff, and offerit caution to fatisfie fa mony of the kyn and freindis of the faid vmq^{le} Alexander as ar nocht fatisfeit alreddie, accordiing to the modificatioun of the Lordis of Seffion, and thair Declaratour to be gevin thairintill.

Quhilkis tua Remiffiones, the Juftice admittit ; and ordanit the faid Williame Forbes of Monymusk to find the faid Caution for the parteis fatisfaction, in maner aboue fpecifeit : Quhairupoun the faid Williame Forbes askit instrumentis.

And for obedience of the faid Juftice Ordinance, ffand Williame Forbes of Port-Lethem cautionn with him felf, coniunctlie and feuerallie, to fatisfie fa mony of the kyn and freindis of the faid vmq^{le} Alexander, as ar nocht fatisfeit alreddie, for the Slauchter aboue fpecifeit ; conforme to the modificatioun of the faidis Lordis of Seffion, and thair declaratour to be gevin thairintill, as law will : Quhairupoun the faid Gilbert Menzeis of Pitfoddellis, as eldeft brother-fone, and the faid David Menzeis, as brother to the defunct, askit actis and instrumentis.

Murder under colour of Law—Drowning for a petty Crime, &c.

[THE Case which follows seems to have taken its origin from feelings of vindictive malevolence, on the part of a Notary in Lanark, a dependent of the Laird of Lee ; who, to gratify his base and revengeful temper, adopted the plan of conspiring against his patron's life and fortune, by accusing him of Murdering a poor man, under colour of Law ! This tale was so well got up, that the Lord Advocate entertained his complaint, and raised Criminal Letters against Lockhart. A more effectual channel was likewise made use of by Weir the Notary, who directly complained, through the Marquis of Hamilton, to the King, who was at all times accessible to such accusations of oppression ; from the double motive of desire to redress the wrongs of his injured subjects, and from his overmastering ' greed of filthy lucre : ' for many were the schemes resorted to by the British Solomon to enrich his coffers with the proceeds of the heaviest fines and pecuniary compositions which could be exacted, as peace-offerings, to appease his Majesty's inflexible justice ! A doubt having arisen in the mind of the Editor as to the truth of the accusation contained in the Criminal Record, he made a pretty extensive search, and has fortunately been enabled to trace the matter to its origin. Without proper vouchers having been produced, the reader would naturally have inferred, from a close inspection of the Record, that the Lord Advocate had been tampered with by some powerful friends of this influential Baron of Lee—and that Lockhart had been really guilty of the atrocious crime imputed to him by his accusers. The Letter from the Privy Council to the King, and the Deposition of Weir, which are appended, satisfactorily explain the matter, and clear the character of the Laird of Lee from the slightest suspicion on this score.]

Dec. 3.—JAMES LOKHART of Lie.

Dilaitit for Drowneing and puting violentlie to death of vmq^{le} James Watfone, in Aucheat-burne, and vtheris crymes fpecifeit in his Dittay.

In respect of the Advocate's absence, he protestis for relief of Johnne Lokhart of Bar his cautioner : And he farther protested for relief of George Auchinlek of Balmanno, cautioner for ' his compeirance befor my Lord Justice and his deputis, in the Tolbuth of E', vpon the xx day of December instant, and that he be nocht haldin to compeir the said day,' &c.

Dec. 20.—Compeirit James Lokhart of Lie, quha proponit and declairit, fforamekill as he being charget, &c., in the moneth of October lastbypast, to find caution to haif compeirit befor the Justice or his deputis, vpon the saxt day of November thairefter, now lastbypast, in the hour of caus, to haif vnderlyne the Law for the allegit Murthour and putting to death of vmq^{le} James Watfone, vnder cullour of Law ; as he that was convict of sic meane crymes, as, be the Lawes of this realme, the dome of death could nocht be inflicted vpon ; and for certane vtheris allegit crymes, at lenth specifit in the Letteris direct thairanent. The said James Lokhart of Lie, the tyme of the geving of the said charge, being furth of this realme, in the pairtis of Ingland, yit nevertheles, be the advyse of his freindis, in his absence, efter knowlege gevin to thame of the said charge, and for eschewing of the danger of Hoirning contenit in the saidis Letteris, in caice of disobedience, George Afflek of Balmanno became cautioner for his entrie, the said saxt day of November, to vnderly the Law for the saidis crymes ; at the quhilk day, the said George Afflek haifing, in respect of the said Laird of Leyis nocht returning, obtenit of the Lordis of Seffioun thair Lordschipis Warrant, direct to the Justice, for continuatioun of the dyet that day, to this present day : The Justice, for obedience of the said Warrant, of consent of my lord Aduocat, personallie present that day, as persewar, continewit the said dyet to this day. Lykas, the said George Afflek than become cautioner, &c.

In respect that my lord Aduocat nor na vther pairtie compeirit this day and place, as persewaris, to insist in his persute, being oft tymes callit to that effect, thairfoir Protestit for releif of the said George, &c. Quhilk Protestatioun the Justice admittit : Quhairupoun the said Laird of Lie askit instrumentis.

I. LETTER, the Privy Council of Scotland to THE KING.

MOST GRACIOUS AND SACRED SOUERANE,

ACCORDING vnto your Maiestie's direction, send vnto me, for trying of those contradictorie informationis maid to your Maiestie be the MARQUES OF HAMMILTOUN¹ and THE LAIRD OF LEE, anent the executioun of *vmquhile James Watfoun*, and setting to libertie of *Jannet Forreft*, his spous, I caufit warne the Marques and the Laird of Lie to compeir this day, for iustifeeing of thair informationis. The

¹ James, second Marquis of Hamilton, a nobleman high in favour with the King, who granted him the Abbey of Aberbrothock, which was erected into a temporal Lordship, appointed him a Privy Councillor, one of the Gentlemen of the Bed-Chamber, Lord Steward of the Household—and subsequently, created him an English Peer, with the titles of Baron Ennerdale, and Earl of Cambridge, Jun. 16, 1619. Besides other great appointments, he was High Commissioner to the Parliament at Edinburgh, August 4, 1621, and was installed Knight of the Garter, Jul. 7, 1623. He died at Whitehall, Mar. 2, 1624-5, ætat. 36. He married Lady Anne Cuninghame, fourth daughter of James, seventh Earl of Glencairn.

Marques comperit be Sir Jolne Hammiltoun, his brother, who affermed, that Jedeone Weir, notair in Lanerk, and Clerk of the proces led againis the said vmq^{le} James Watfoun, declairit and shew vnto the Marques, that this Watfoun and his spous wer onlie callit and convict, and Watfoun execute, for steilling of ane lamb, and that the wyffe, after her convictioun, wes sett at libertie. And for verificatioun of this his affermatioun, he exhibite the said Jedeone Weir; who, vpoun examinatioun, confessit that he had gevin this informatioun to the Marques, as alswa to your Maiesteis Aduocat, the tyme of the raising of the Criminall Letteris aganis Lie; as your Maiesteie, be his Deposition, heirwith send vp, will perfare. The Laird of Lie compeirand, affermed constantlie, that this Watfoun wes callit and convict, vpoun his awin judiciall Confessioun; and accordingleie execute, for the steilling of nyne scheepe. And for verificatioun heirof, he producit the proces, writtin every worde with Jedeone Weiris awne hand; whilk, being showne vnto him, he could not deny the same.

This is all that hes bene tryit in this mater; whairby it appeiris, that the Marques hes bene abused¹ be the said Jedeone Weir, who, vpoun some priuat passioun and miscontentment aganis the Laird of Lie, maid this informatioun. And as for the wyffe, thair wes no thing verifeit aganis hir, bot the stealing of ane lamb, confessit be hir self. Whairupoun she wes dimittit,² in respect that the Assise could gif no verdite aganis hir. At this examinatioun, I wes assistit be the Archiebischop of Glasgw,³ the Erll of Glencairne,⁴ the Lord of Scone,⁵ the President,⁶ Preue Seill,⁷ Secretair,⁸ Justice Clerk,⁹ Aduocat,¹⁰ and Sir Robert Meluill,¹¹ who all thocht meete that Warrant and directionnould be gevin for deserting of the dyet appointit for the Laird of Lies tryale; whilk accordingleie wes done, whill the forder knowledge of your Mat^{ies} gracious will and pleasour heiraient, whairvnto I sall conforme my selff. And so, with my humble and hairtie prayeris vnto God, recommending your sacred Mat^{ie} and all your royall progenye to his faderlie and devyne protectioun, I rest for ever,

Your Maiesteis most humble and obedyent subiect and seruitour,

(EDINBURGH), 28 Nouember, 1611.

DUNFERMELINE.

TO THE KING his most sacred Majestie.

II. ' JEDEAN WEIR, his DEPOSITION, 27 Nouemb. 1611, anent Laird Lie Lockhard,'
referred to in the foregoing Letter.

JEDEONE WEIR, notair in Lanerk, sworne, and demandit vpoun the forme and maner of the Dittay and accusatioun of vmquhile *James Watfoun* in Lie Mure, and Jonnet Forrest, his spous, and of the convictioun and executioun following thairupoun: Deponis, that the said vmquhile James and his spous wer only callit and persewit for the stealing of ane lamb; and that thay wer convict thairof: And that the said James Watfoun wes drownit for the stealing of the lamb; and that the said Jonnet Forrest, his spous, wes sett at libertie: And that this Deponner wes Clerk of the proces; and that the proces is writtin with his awne hand: And this he deponis, so fer as his memorie seruis him. And deponis, that he gaif this informatioun to the Marques of Hammiltoun, as alswa to Sir Thomas Hammiltoun of Byris, knight, his Maiesteis Aduocat.

TENET *cum principali*, J. PRYMOIS.

Chest—Falsct (Forgery)—Imposture—Perjury, &c.

Dec. 12.—DAVID DONALDSOUN, chopman in the Cannogait.

Duped; imposed upon. ² Dismissed *simpliciter* from the bar. ³ John Spotiswood, the Church Historian, &c. ⁴ James, seventh Earl of Glencairn. ⁵ David, first Lord Scone, who, while he was Sir David Murray of Gospertie, was successively Cup-bearer, Master of the Horse, Captain of the King's Guard, and Comptroller. For the share he had in rendering the King so essential service, on occasion of Gowrie's Conspiracy, he got the Barony of Ruthven, with the Abbey of Scone, which last was erected into a temporal Lordship; and he was afterwards created Viscount of Stormont. ⁶ John Presten of Fenton Barns, President of the College of Justice. ⁷ Sir Richard Cokburn of Clerkington. ⁸ Sir Thomas Hamilton, afterwards Earl of Hadington. ⁹ Sir John Cokburn of Ormiston. ¹⁰ Sir Thomas Hamilton. ¹¹ Of Bruntisland, one of the Extraordinary Lords of Session.

Dilaitit of the ffalsiefeing, fforgeing, and counterfuteing of ane fals Assignatioun, &c. fpecifeit in his Dittay following.

PERSEWARIS.

Sir Thomas Hammiltoun of Byres, kny^t, Johnne Alfchunder,¹ indueller in the Cannogait.

DAVID DONALDSOUN, chopman in the Cannogait, 3e ar indytit and accuset, fforfamekill as 3e, haifing ingyret² 3ourself in the acquentance of Johnne Alfchander, indueller in the Cannogait, ane puir, aged, fimple³ man, wanting childrene and freindis;⁴ of fet purpois to mak 3our advantage, vnlauchfullie, of him, and to defraud him of that fmall portioun of geir quhilk refted⁵ to him for his intertenement,⁶ in his decriped and decayed age; and be 3our flatteris and fubtelteis, promeiffing to him 3our affiftance in his actiones and effairis, with his intertenement in 3our houfe; haifing pairby obtenit of him credeit to handill and pervyse his writtis and euidentis; 3e, in the moneth of September, or pairby, in the 3eir of God I^m.Vj^c. and ellevin 3eiris, thiftiouflic flaw and conceillit frome him, and retaynit in 3our handis, tua Obligationis maid to him; the ane pairof, of the dait the xxj day of Januar, I^m.V^c.lxxxxviiij 3eiris, quhairby Johnne 3oung in Dudingftoun was obleift to pay to him the fowme of ane hundreth pundis, and fail3eing pairof to infest him (in) ane annuel-rent; and the vper, of the dait the fyft day of Februlare, I^m.Vj^c. and ten 3eiris, quhairby Johnne and Thomas Carffis was bund to the faid Johnne Alfchunder to pay to him 3e fowme of ane hundreth and tuelf pundis: And redelyuering to him 3e reft of his writtis, 3e affirmet to him, that 3e had delyuerit to him his haill writtis and euidentis. AND eftir that 3e had thiftiouflic ftowin fra him his faidis Obligationis, in maner and at 3e tyme aboue fpecifeit, and had confiderit with 3our felff that 3e faidis Obligationes wald be vnprofitable to 3ow vnles 3e war maid assignay pairto, and knowing alfo that 3e puir man was nocht altogidder fo fenfles as to denude him felf of his haill guidis, geir, obligationes, and dettis in 3our fauour, being ane ftranger, to quhome he was nawayis obleift, and quhome he had no reffone to trust with his haill moyane and eftait; 3e, falllic, wicketlic, and effrontellie refoluet to fforge, counterfute, and ffalfsiefie to 3our felf and 3our awin behuife ane Assignatioun to the faid Johnne Alfchunderis foirfaidis Obligationes and haill remanent guidis and geir: ffor performeance quhairof, knowing that 3e behovet to haif 3e affiftance of fum man quho wald tak vpone him 3e name and represent the perfonage of the faid Johnne Alfchunder, 3e firft delt with Ramfay, ane aged begger, to play that perfonage; and eftir 3e had craftillie intyfed him to confent pairto, 3it foirfeing⁷ with 3our felff the grit and mony

¹ Alexander. ² To ingratiate, by artifice and circumvention. From Lat. *in*, and *gyro*, to twist or turn round; to entwine, &c. ³ Weak; facile. ⁴ Childless, and having no blood-relations, &c. to care for him in his old age. ⁵ Remained. ⁶ Livelihood; maintenance. ⁷ Foreseeing

differences, in fauour and stature,¹ betuix him and þe said Johnne Alschunder, wald easilie bewray ʒour falsset, ʒe delt with Cuthbert, cordiner in the Kowgait, quha haifing refuisset to be actour in so pernicious and wiked ane interpryse, at last ʒe delt with Johnne Henrie, cobbler in the Cannogait, and finding him bothe fit and willing to play the pairt of so damnable a tragedie, and knawing that gif his face fould be sene bare and vncoverit, it wald be paireftir easilie discoverid, that he haifing the sicht of bothe his eyis nicht easilie be discernit from Johnne Alschunder, quho is blind of one of his eyis, ʒe causit þe said Johnne Henrie cover one of his eyis and þe syde of his face with ane blak clothe, vpone the tuelf day of November lastbypast, and than informet him sufficientlie of all the circumstances necessar to be vset be him in the representatioun of the persone of the said Johnne Alschunder, for accomplieffing ʒour wicket, pernicious, and fals purpois: And immediatlie paireftir, convoyit him with ʒow to the toun of Leith; and pair travellit with Patrik Glasfurd, notter, to forme ane Assignatioun to ʒow of the foirsaidis Bandis, and of the said Johnne Alschunderis haill remanent guidis; quhilk being done at ʒour desyre, ʒe paireftir convoyit the said Johnne Henrie, cobbler, to þe wryting-buithe of the said Patrik Glasfurd in Leyth, in quhais presens, and in þe presens of Archibald Norwell, connotour,² and dynerse honest witneses, altogidder ignorant and innocent of ʒour false, dissaueabill, and wicket purpois, the said Johnne Henrie, cobbler, quhome ʒe supposed in place of þe said Johnne Alschunder, and quho, of ʒour speciall causeing, command, counsell and perswasoun, taking vpone him, falselie and mischantlie,³ þe name and personage of þe said Johnne Alschunder, gaif command to the saidis connoteris to subscriue to ʒow and in ʒour fauouris the foirsaid Assignatioun⁴ to the said Johnne Alschunderis Obligationes and guidis. Quhilk being done, and subscriuit be þe saidis Notteris and witneses insert; and þe Notteris, for dischairge of pair deutie, haifing proponit to ʒow, that resson and conscience requyret that ʒe fould provyde for þe pure auld man Johnne Alschunderis intertenement, during his lyftyme, ʒe consented that þai fould forme ane Bak-Band, obleissand ʒow to him to þat effect, during his lyftyme; quhilk ʒe subscriued and delyuered to the said Johnne Henrie, affirmeing him self falslie to be the said Johnne Alschunder: AND schortlie paireftir ʒe causet registrat the foirsaidis Obligationunes, and gaif in the said Assignatioun to the Register; and

¹ In point of looks, complexion, personal appearance, and stature.
O. Fr. *meschant*, wicked, worthless, &c.

² Co-Notary.

³ From

⁴ By the Law of Scotland, blind or maimed persons, and those who cannot write, may execute Last-wills and deeds of the greatest importance and solemnity, through the medium of two Public Notaries, who, in presence of four or more witnesses, read over and explain the nature of the Deed to be then completed; and on getting the instructions of the party, write out an official and Notarial schedule, or '*docquet*,' as it is called, attesting the fact, and stating precisely the reason of their being called upon to subscribe the deed in question. On the Notaries adhibiting their official signatures—the witnesses likewise, in attestation of the fact, subscribing their names—the writing is perfectly valid in Law.

pairupoun and vpone the said fals Assignatioun 3e raifet Letteris of Poinding and Intromiffioun, and fallie, wicketlie, and thiftiouſlie mellit¹ and intromettit with fourtene ſcheip pertening to the ſaid Johnne Alſchunder, flew and diſponit vpone tua of thame, ſauld and diſponit vpone the reſt, and waifed and conſumed the price pairof in ſatiſfeing the gluttonie of 3our deboiſched² affociattis: AND being callit befor þe Lordis of Secreit Counfell, 3e abaid at þe verritie of the ſaid Assignatioun, vpone 3our grit aith, and vpone the perrell of 3our lyfe: LYKAS, 3e haifing abiddin pairat, in prefens of the Lordis of Seſſioun, and periuredlie avowed the ſame to be ane trew evident, eftir that be pair dilligence in 3our Examinatioun, 3e was put frome all cullour of juſtifeing pairof, 3it 3e maliciouſlie and impudentlie preifed to cleir 3our ſelff, and bring wrangus imputatioun pairof vpone 3our innocent wyfe and hir ffather. QUHAIRBY, 3e haif committed the crymes of Thift, Impoſture, Periurie, Falſet, and Diſſaitful ſuppoſitioun of ane counterfute perſonage, fallie, wicketlie and diſſaueabillie to aſſume and vſurpe the name and perſonage of the ſaid Johnne Alſchunder, to his diſſait, preiudice, and maniſeſt oppreſſioun, in maner aboue writtin. For the quhilk, 3e aucht to be exemplarlie puneifchet, as ane Theif, abuſear, impoſture, and periured falſer, and perſuader of ane pernitiouſ villane to vſurpe, aſſume, and tak vpone him the name and perſonage of ane of his Maieſteis trew ſubiectis, for his diſſait and cuerthrow.

THE perſones of Affyſe being choſin, ſuorne, and admittit, eftir accuſatioun of new agane of the ſaid David Donaldſoun, be Dittay, in thair prefens and audience, of the crymes aboue writtin, and eftir production to thame, be our ſaid fouerane lordis Aduocat, of ane Decreit of the Lordis of Seſſioun, of the dait the ellevint day of December iſtant, ffinding and declairing the foirſaid Assignatioun allegit, maid and grantit to the ſaid David Donaldſone be the ſaid Johnne Alſchunder, in maner ſpecifeit in his Dittay, to be ffals and fenzeit in the ſelf, forget, and devyſet be the ſaid David; and thairfoir, decerning and ordaning him to be puneifchet in his perſone and guidis thairfoir with all rigour, in exampill of vtheris.

VERDICT. The Affyſe, be the mouth of Johnne Mathie, bonat-maker, chancellor, ffand, pronuncet and declairit the ſaid David Donaldſone to be Giltie, culpable, and convict of the crymes of Thift, Impoſture, Periurie, Falſet, and Diſſaitful ſuppoſitioun of the ſaid Johnne Henrie, cobbler, ane counterfute knaif, fallie, wicketlie and diſſaueabillie to aſſume and vſurpe the name and perſonage of the ſaid Johnne Alſchunder, ane pair, aget, ſimple man, to his diſſait, preiudice, and maniſeſt Oppreſſioun; in maner ſpecifeit and at lenth ſett down in the ſaid Dittay.

¹ O. Fr. *mesler*, to intermeddle, &c.

² O. Fr. *desbauché*, debauched, worthless, &c.

SENTENCE. To be tane to the mercat croce of Edinburgh, and thair to be hangit vpone ane gibbet, quhill he be deid; and his haill moveable guidis and geir to be efcheit and inbrocht to our fouerane lordis vse, as culpable and convict of the saidis crymes:—And lykwayis, Ordanit thir woirdis, ‘FOR THIFT, FOR FALSET, FOR IMPOSTURE, AND PERIURIE,’ to be writtin in grit letteris vpone tua feuerall paperis, and affixt, ane vpone his bak, the vther vpone his breift, the tyme of his executioun. Quhilk was pronuncet for Dome.

[*Sir Williame Heart, Justice-Depute.*]

ASSESSORES nominat to the Justice be the Lordis of Secreit Counsell.

Mr Johnne Prestoun of Pennicuik, President of the College of Justice; Sir Richard Cokburne of Clarkingtoun, Lord Previe Seall; Sir Alexander Drummond of Medope; Mr Williame Oliphant of Newtown.

‘Invasion’—Taking Captive—Wearing Hagbuts, &c.

Dec. 21.—WILLIAME DOUGLAS, Younger of Drumlanerig.¹

Dilaitit of the Invaiding and persewing of Williame Kirkpatrick of Kirkmichell; and for Vfurpatioun of our fouerane lordis royall pouer and authoritie, in taking him Captive and Prissoner at Dreffitland, and thairfra transpoirting him to the place of Drumlanerig, quhair he was detenit; and keiping him in cloise priffone, within the Tour of Drumlanerig, for the space of fax or sevin dayis, or thairby, he being our fouerane lordis frie lege; committit vpone the fyftene day of July, 1610 yeiris: And for contravening of our fouerane lordis Actis of Parliament, in beiring and weiring of hagbuttis and pistolettis.

PERSEWARIS, Williame Kirkpatrick, appeirand of Kirkmichell; Sir Thomas Hammiltoun of Byres, kny^t. PRELOCOUTOURIS in defence, Mr Alexander King, Mr Thomas Hoip, Aduocatis; my Lord of Angus; my Lord of Wigtoun; Sir James Douglas elder of Drumlanerig; my Lord Sanquhar.

It is allegit—na proces at Kirmichellis instance, becaus he is rebell; and producet the Hoirning for verificatioun thairof, at the instance of the Laird of Cloisburne elder, for nocht payment of the pryces of certane victuall. It is ansuerit, aucht to be repellit, in respect he is relaxt; and producet the Relaxatioun thairupoune.—It is forder allegit, that he is at the horne for nocht payment of the Taxatioune.—Thaireftir, my Lord Aduocat declairit that he had Warrant of his Maieftie to persew, and conforme thairto, declairit he wald infist in the pannellis persute, for the crymes contenit in the summondis.

It is allegit be my Lord Aduocat, that this Hoirning for the Taxatioun aganis Kirkmichell can nocht debar him to persew, becaus, be Act of Parliament, in anno 1597, it is appointit that all Hoirningis execute aganis ony pairtie, fall ather be producet judiciallie, or in presens of ane Notter and foure witnesfes: And trew it is, that the Registratioun thairof is contrair to the said Act. It is

¹ See the Case of Alexander Kirkpatrick, sone to Sir Thomas K. of Cloisburne, kny^t, Jun. 28, 1611.

anfuert that the Act of Parliament in anno 1597 is tane away by a posteriour Act of Parliament, viz. in anno 1600.—It is allegit be my Lord Aduocat, that this Hoirning is nocht competent in the perfone of the pannell, feing it is nocht execute at the pannellis instance for ane criminall caufe; and forder, the pairtie perfewar is relaxt, albeit he haif nocht his Relaxatioun vpoun him. It is anfuert, it is verrie competent to allege na proces at the instance of the perfewar, fa lang as he standis rebell.

THE Justice, with advyse of the Assessoris, ffindis na proces at the instance of Kirkmichell, fa lang as he standis rebell, vnrelaxt.—Quhairupoun the pannell askit instrumentis.

My Lord Aduocat declairis he infistis, for his Maiesteis intreis, in perfute: quhairupoun the pannell askit instrumentis.

It is allegit, that my Lord Aduocat man (*must*) condiscend in the Summondis: *Firſt*, that the pannell, anent the beiring of Pistolettis, thai war borne on his perfone: *Secundo*, gif thai war borne in his companie, man¹ condiscend vpone that perfone: *Tercio, non fuit dolo*, becaus gif any was borne in his company, it was by² his knowlege.—It is anfuert, aucht to be repellit, in respect of the Summondis beiring that the Laird of Drumlangrig and his complices, at the leift ane or vther of thame, buir pistolettis at the tyme lybellit, viz. thais quha ar exprefit in the Summondis, and euerie ane of thame, at the leift ane or vther of thame.

THE Justice, with advyse of the Assessoris, ffindis the summondis, as thai ar sett down, to be relevant, beiring that the pannell, with thair complices, lurkit and darnit³ thame felfis in maner lybellit.—Quhairupoun my Lord Aduocat askit instrumentis.

It is allegit, that the pannell can nocht be convenit for *Williame Douglas of Reidhous*, becauſe the ſaid Williame, being convenit for piſtolettis aſoir the Counſell, was fynet be the Counſell thairſoir; and producet ane Decreit of Counſell, for verifeing thairſoir: And in reſpect of the Act of Parliament, in anno 1600, can nocht be perſewit aſoir the Juſtice, for that cryme, of new agane.—It is anfuert, aucht to be repellit, in reſpect of the Summondis. It is allegit, that Williame Douglas being perſewit at the inſtance of the pannell, beſoir the Counſell, for bering of piſtolettis, and the (injury) done to the pannell the tyme lybellit; as the Decreitis beiris: It is thairby tryt,⁴ that the beiring thairſoir was in Kirkmichellis companie, and nocht in the pannellis company: *Secundo*, ſeing Douglas is fynet beſoir the Counſell ſen that cryme, as be the ſaid poſteriour Act of Parliament he ſuld nocht be of new perſewit beſoir the Juſtice for that cryme, *per conſequentiam* the pannell can nocht be perſewit as haifing Douglas in his companie.—It is anfuert be the Aduocat, that it is a verrie evill conſequence,⁵

¹ Must. ² Without; contrary to. ³ Concealed; hid. ⁴ Decided. ⁵ A very false conclusion.

and the allegiance aucht to be repellit, in respect of the Summondis.—It is allegit for *Hob Hunter*, that he was deid before the tyme lybellit; quhilk he offeris to preve, be Witnesfes present at the bar.—It is anfuerit, that that probatioun can nocht be reffaut, bot man be tryit be the Affyse.—It is allegit that the Summondis is nocht relevant, except the perfones contenit in the Summondis war the pannellis houshald ferwandis, or cum furth of his hause with him, be his directioun, and that thai¹ war borne *ex mea scientia*: And that na fact or deid is done with pistolettis to the hurt of ony perfone, quhilk is nocht exprest in the Summondis.—It is anfuerit, aucht to be repellit, in respect of the Act of Parliament and Dittay foundit thairupoun: And forder, seeing the lyk perfute hes oft tymes bene decydet and fund relevant in this Judgement ofbefoir, desyres my lord Justice to advert thairvnto.—It is anfuerit be the pannell, that the preceis wordis of the Law is not to be respectit, bot *anima et ratio legis*, for the Law-maker is nocht to punice perfones for haifing pistolettis in thair cumpany by² thair knowlege, bot³ the breker of the Law be schuting of pistolettis, and beiring of thame of purpois to offend thairwith.—Anfueris the Aduocat, aucht to be repellit, in respect of the Act of Parliament, quhairto he referris him self.

THE Justice, with advyse of the Assessouris, Repellis the allegiances, in respect of the lybell as it is set down, except for *Reidhous*, quhilk the Justice continewis that matter quhill⁴ the Counsell be advyset thairwith.

It is forder alleget for the pannell, that seing the Judge has ffund the Dittay relevant, in respect he and his complices darnit and lurkit in maner lybellit; that thairfoir, the pannell can nocht be convenit for *William Douglas* beiring of pistolettis; becaus it is cleir, be the Decreit of Counsell producet, that *Reidhous* wes vpon the Ball-grene, playing with him, Kirkmichell, the hail lycht, and sa possibillie could nocht be darnit ofbefoir in the leght; and the perfewer is nocht able to afferme that thai war darnit eftir the boilspell⁵ dissoluit.—It is anfuerit be the Aduocat, it is nawayis contrair, seing *William Douglas* mycht haif bene in Kirkmichellis company afoir none, and with the pannell (efter none).

It is allegit be the pannell, that the taking of ane man is nocht capitall, bot is only perfewit as ane Ryote befoir the Counsell; and producet tua practikis⁶ led afoir the Counsell for the lyk cryme.—It is anfuerit, aucht to be repellit, in respect of the cowmoun Law and practik obseruit befoir the Justice in the lyk perfutes ofbefoir: Repeittis *Dumbrekis* practik, M^cgregouris, and Fintreis for verifieing thairof.—It is anfaerit, for *Dumbrekis* practik, that he is nocht sa

¹ Viz. the pistols.

² Without.

³ Unless.

⁴ Until.

⁵ After the party broke

up. This term is commonly written and pronounced *Bonspeil*, signifying a contest between two parishes or parties at 'curling' on the ice, archery, golf, &c. It is likely, in the present instance, to have been a match at 'golf,' or, more probably, *foot-ball*, both of them favourite games in Scotland. The *Ball-green* favours this conjecture.

⁶ Decisions; instances; parallel cases.

mekill convict for taking of the Kingis frie lege, as for Thift and Stouthereif; quhilk he referris to his convictioun.—It is allegit be the Aduocat, that *Dumbreck* is convict of Treffone, for the taking and detening of Meldrum of Aquhorteis, and Andro Meldrum his brother. Allegis the lyk for *M^cGregouris*, quha war bayth convict and put to the death for the faidis crymes: And as for *Fintrie*, the Summondis was ffund relevant, albeit he was abfoluet be þe Affyfe.—It is anfuerit be the pannell, thair was ma¹ cryme conioynet in thair Dittayis, nor² fimple Taking only, and mair nor ane Taking; and the Law Ordanis *exercitium Privati carceris*, only to be ane cryme, loco, ‘*Jubens*,’ codice, ‘*de Privatis carceribus*,’ et *Baldus ibid.*: Quhilk Law is alfo derogait be ane posteriour Law in that famyn Tittle, be quhilk (*exercitium*) *privati carceris* is only punifchet *pena* and the praetyk of ³ is only to puneife *pena pecuniaria*; and allegit Julius Clarus.⁴

It is allegit, the Laird of Kirkmichell, the tyme of his taking lybellit, was at the horne, and be vertew of Letters of Captioun, was tane be the Scheref of the fchyre, quhome the pannell affistit allanerlie⁵ in the Taking: And producet the Hoirning and Letteris of Captioun, be the quhilk the Scheref-Depute, Robert Creichtoun, was charget to tak him, being rebell. It is anfuerit, that the allegiance aucht to be repellit, in refpect the Letteris quhairupoun the Laird of Kirkmichell is denuncet war fufpendit *fimpliciter, in foro contradictorio*, and he relaxt be the fpace of ane half yeir of befoir.—It is allegit be the pannell, that the tyme of Kirkmichellis taking, thair was na Relaxatioun fchawin, and na knowlege was gevin of his Relaxatioun to the Schireff; and fa he was *in optima fide* in taking of the Kingis rebell, nocht knawin to him to be relaxt: And forder producet ane Act, quhair Robert Creichtoun was constitute Scheref-depute. It is forder allegit, that gif the Scheref had been perfewit for Taking of the Kingis fre lege, nocht knawn to him to be relaxt, bot charget to tak him; as na Dittay could be relevant aganis him, in lyk manner, na proces aganis the pannell for being in his companie, and affifting the Scheref at that tyme.—It is anfuerit, aucht to be repellit, in refpect of the Summondis, Decreit fufpending the Hoirning, and Relaxatioun producet; and the lybell beiring that Young Drumlanerig and his complices hurt and woundit Robert Creichtoun for ftaying them to flay Kirkmichell; and fua can nevir allege that thai affistit him in execution of his office.

It is forder allegit, that this Dittay can nocht be comptit ane cryme, in refpect the perfone tane was the Kingis rebell; and for verifeing thair of, repeittis the Hoirning producet for nocht payment of the Taxation; and thairfoir the Dittay can nocht be put to ane Affyfe: Quhilk Hoirning is daitit the xj of Februar

¹ More. ² Than. ³ Obliterated in Record. ⁴ An old Commentator. ⁵ Only; merely.

1601. It is anfuerit, that it is nocht onlie for Taking of the Kingis frie lege that the pannell is conuenit, bot for Vfurpatioun of the Kingis authoritie.—It is allegit, that exécept the perfone tane, the tyme of his taking, had bene the Kingis frie lege, it can nocht be fund that the pannell vfurpit the Kingis authoritie.—It is anfuerit, that the taking of ony perfone but¹ Commiffioun of the Prince is Vfurpatioun of the Kingis authoritie, quhidder he be rebell or nocht.

THE Justice continewis, with advyse of his Affeffouris, Interlocutour vpon the former allegiances to Tyfday nixt.

It is forder allegit, that as of the Law, *bannitus potest impune occidi, sic multo fortius capi et incarcerari*; quhilk is exprellie decydit be Baldus, in the foir-faid Law ‘*Jubens*,’ codice ‘*de Privatis carceribus*,’ numero finali: And be Julius Clarus, *L. sententiarum* § *Homicidio*.—It is anfuerit be the Aduocat, that *Banniti*, of the Cowmoun Law, was only thay quha war declairit rebellis for ane capitall cryme.—It is duplyit for the pannell, that of the Ciuill Law, that *Banniti* war alaweill rebellis for crymes, as for pecuniall fowmes; and for preving thairof citit Julius Clarus, *L. sententiarum* § *Homicidium*.

THE Justice Continewis Interlocutour, with advyse of his Affeffouris, to Tyfday nixt.²

Dec. 24.—Compeirit Williame Douglas, younger of Drumlanerig, quha declairit that he offerit him self reddie to anfuer and abyd tryell vpon the Summondis and Dittay, at the instance of his hienes Aduocat: And als, is content, that nochtwithstanding the Laird of Kirkmichell be rebell, and was declarit be Hoirning the last dyet, to pas fra the said Hoirning vset aganis him, and that he haif place and perfone to stand in Judgement aganis him, and to insist in his persute on the Summondis and Dittay producet aganis him: And in respect thairof, the pannell desyret my Lord Justice to pronounce Interlocutour vpon the allegiances and anfueris maid in this caus vpon Setterday last, quhilk was the last dyet of this proces.

THE Justice Desertis this dyet, and that in respect that my lord Aduocat and the Laird of Kirkmichell, parteis persewaris, quha war oft tymes callit to insist in this persute, compeirit nocht to that effect.—Quhairupone the pannell askit instrumentis; and that nochtwithstanding thairof, he offerit him self to defend accordring to the Law, for the haill crymes contenit in the Dittay.

(Apr. 24, 1612.)—MY Lord Aduocat declairit that he wald insist for baithe the crymes contenit in the Summondis, alaweill for taking and incarceration, as beiring and weiring of pistolettis.—The pannell, ffor cleiring of his In-

¹ Without. ² [On the margin of the Record,] “This haill proces preceeding, be ane Act maid vpon the xxiiij day of Apryle, 1612, is be the Justice, with advyse of the Lordis of Secreit Counfell, ordanit to be deletit furth of the Buikis of Adionall,” &c.

nocencie of the first pairt of the Summondis, concerning the taking of the Laird of Kirkmichell, &c., producet ane Letter, subscryuit be the Laird of Kirkmichell, and certane famous Witnesse; quhair of the tennour followis.

I, WILLIAM KIRKPATRICK, appeirand¹ of Kirkmichell, Testifeis and declairis, that þe tyme I went with Young Drumlanerig to the place pair of, quhilk was vpon the xv day of July, I^m.Vj^c. and ten zeiris, it was at my speciall desyre to gang with him, for eschewing of farther inconvenient to my brother and sic vtheris as war in my companie, for allegit wrangis done to his faper; quhair of I was innocent: And declairis þat I wes nocht tane pair against my will; and that efter I come to the Place of Drumlanerig, I was honestlie and courteoullie interteneit, haifing frie libertie to pas quhair I pleisit, as ane frie Gentilman: And being on the morne paireftir oft and dyuerse tymes requyret be Young Drumlanerig to pas quhair I pleasit, I refuset to go forth, in respect of sum informatioun I had ressaunt; and remanet pair against his will, quhill he forcet me to pas away, alwayis with sic forme of courtesie as he could vse to sic ane Gentilman: And that I was nawayis detenit nor keipit as Captiue or Prisoner: And that þe Letteris raisit at my instance aganis him befor þe Justice, was by² my knowlege or advyse: Quhilk I testife to be of treuthe. AND consentis þat þir presentis be insert and registrat in the Buikis of Counsell or Adiournall: And to that effect, Constitutis Mr Alexander King, aduocat, my Pro^r, to compeir and consent to þe registering heirof; quhilk is writtin be Williame Penman, wyter in Edinburgh, and subscryuit with my hand, AT EDⁿ, the ellevint day of Januar, the zeir of God I^m. sax hundreth and twelf zeiris, befor þir Witnesse, Thomas Greirfone of Bariarg, James Greir his broþ^r, Sir Williame Greirfone of Lag, kny^t, James Dowie, wyter, and George Bryce, inferter of þe dait and witnesse heirintill.

KIRKMICHELL, Younger.

Lag, witnes, THOMAS GRIERSONE, witnes, JAMES GRIERSONE, witnes,
J. DOWIE, witnes, GEORGE BRYCE, witnes.

Compeirit the said Mr Alexander King, as pro^r for Williame Kirkpatrick, younger of Kirkmichael, and desyrit the samyn to be insert and registrat in the Buikis of Adiornall, to the effect foirsaid; and alledges, that the said cryme of Taking and Incarceratioun of Young Kirkmichell, can nawayis be put to the knowlege of ane Assyse, in respect of the said Letter and contents thair of: And for better securitie, desyret, as of befor, the said Letter and Declaratioun to be insert and registrat in the Buikis of Adiornall, therin to remane *ad futuram rei memoriam*.

My Lord Aduocat takis instrumentis of the production of the said Letter and Declaratioun thairin contenit. The Pannell declairis he will vse na vther defence in this matter, bot the allegiance immediatlie preceeding, and renunes all vther exceptiones proponit be him in this caus of befor for this cryme, or competent to him aganis the same. My Lord Aduocat producet HIS MAIESTEIS LETTER, and desyret the clause following, insert thairintill, quhilk concernis this persute, to be insert in the Buikis of Adiornall; quhair of the tennour followis.

AND as for that vther poynt of your Letter, concerning the forder following of that persute intentit aganis YOUNG DRUMLANERIG, sforasmuch as We understand that he, being laitlie reconceillit to Kirkmichell younger, is to compeir befor our Justice at þe day and place specifeit in your last Summondis raisit against him, and pairby (for clearing him self of that cryme quhair of he is accuset) to alledge that he did naper violentlie apprehend, nor detene the said Kirkmichell. It is pairfoir our speciall

¹ Heir-apparent.

² Contrary to; without.

pleasour, that at þe foirfaid dyet ʒow continow ʒour perfute aganſt him, and that vpon his allegeing þe foirfaid exceptioun, ʒow do demand of him, gif he will nocht halilie rely pairupoun, renunceing all vther exceptiones formerlie proponit in his defence : And vpon his Declaratioun that he will do ſo, ʒow fall than inſiſt for remitting þe Tryell and furdur conſideratioun pair of to the Lordis of our Counſell ; inſiſting, in the meane tyme, earneſtlie, that theaſe vther exceptions heirtofoir vſet in his defence, being ſo dangerous, and by no preſident warranted, may nocht heireſtir be recoirdit in the Registeris of Ad-iornal, as lauchfull or tollerable Defences to be proponit in the lyk Caiſſis, in ony tyme cuming :¹ Quhairin, nawayis douting of ʒour eair and reddines, We bid ʒow fairweill. Frome our Court, ATT QUHYTEHALL, the nynteneth of Merche, 1612.

And in reſpect thair of, and of the allegiance proponit be the pannell and his Judiciall Declaratioun, that he renunes all his former Defenſſis, proponit of be-foir in this cauſe, for this cryme, or competent to him aganis the ſanyn, except vpon the particuler allegiance foundit vpon Kirkmichellis Declaratioun aboue mentionet, ſubſcryuit be him, and producet be the pannell this day ; firſt, deſyres, accoirding to his Maieſteis commandment, that the tennour of the former Defenſſis proponit be the pannell in this cauſe, be deleit furth of the Register of Ad-iornall ; quhilk the Juſtice hes preſentlie ordanit to be done : And nixt, deſyret my lord Juſtice, that he will be advyſet with the Counſell, concerning the allegiance aboue writtin, proponit this day be the pannell. My Lord Aduocat declairit that he paſt fra the perfute of the pannell, for the laſt pairt of the Summondis, for the beiring and weiring of piſtolettis at this tyme and place : Quhairupone the pannell aſkit instrumentis.

INTERLOCUTOR and Deciſion of the Juſtice and Lords of Secret Council.

THE JUSTICE, In reſpect of this Letter producet be Mr Alexander King, ſubſeryuit be the Laird of Kirkmichell, and circumſtauces contenit thairin, with advyſe of the Lordis of Secret Counſall, findis that this matter can nocht be put to the knowlege of ane Aſſyſe : And ſiclyk, in reſpect that the pannell hes this day paſt fra the haill former Defenſſis proponit be him in this cauſe, for the ſaid cryme, of befoir, in maner contenit in his former Declaratioun, the Juſtice, with advyſe of the Lordis of Secret Counſell, ſittand this day in Counſell, Ordanis the haill former allegations proponit in that matter of befoir, to be deleit furth of the Buikis of Ad-iornall.

Quhairvpon my Lord Aduocat aſkit instrumentis ; lyk as the pannell alſo aſkit instrumentis, vpon the firſt pairt of ſaid Interlocutour.

Slaughter.

Feb. 12, 1612.—ROBERT SCOTT and ADAME SCOTT, Bailleis of Hawik ; Jok Scott, belman in Hawik ; Williame Donald, alias *Nymbill*, in Hawik ; John Lidderdail, thair, callit *Jok the Deacon* ; Hob Scott, thair, callit *Hob the Lonkie* ;

¹ It is obvious that ſteps had been taken by the Officers of the Crown, in this remarkable Caſe, to procure the private agreement of the parties ; and on this being effected, the ‘ *dangerus* ’ Defences, ſo boldly and ably urged by the eminent Counſel and fore-ſpeakers, would forthwith be expunged from the Record ; or, at all events, never be permitted to be cited as precedents in future. The Defences were accordingly withdrawn, on this underſtanding, that the matter would be privately adjusted by the Lords of the Privy Council, as umpires. No deletion appears on the face of the Record.

Jok Schorte, thair; and Williame Johnneftoun, feruitour to *Mariones Hob.*

Dilaitit for airt and pairt of the Slauchter of vmq^{le} Johnne Ellote in Redden, callit Johnne of Rynfiegill, committit within the said Jok Schortis duelling hous in Hawik, in the moneth of July, the yeir of God I^m.Vj^c. and ten yeiris.

PERSEWAR, Bessie Ellote as relict, with the ffyve fatherles bairnes, &c.

PRELOCUTORIS for the pannell, Mr Thomas Nicholfoun and Lawrence Scott, Advocatis.

The persewar producet the Letteris deulie execute and indorfate; and in respect thair of, and that scho offeris hir self reddie to persew, protestis for the releif of George Elphingstoun of Glenfakisbarneheid, and Williame Elphingstoun his brother, of thair cautionerie.

It is allegit, that the Dittay is nawayis relevant to be put to ane Assyse, in respect that the Dittay beiris that he was fund lying deid in the Irnes;¹ bot it is of verritie, that vpon the morne thaireftir his committing to waird,² he hangit him self in his awin belt; and sa, haifing desperatlie put hands in him self, the pannell can nocht be put to the Tryell of ane Assyse, as airt or pairt of his death.—It is answert, aucht to be repellit, in respect the allegiance is contrair to the lybell.

THE Justice remittis the matter, anent the Slauchter of the defunct, and tryell of the treuth of pannellis allegiance, concerning the putting handis in him self, to the knowlege of ane Assyse.

ASSISA, Jok Ellote, in Braillie, Will Scott, in Braxholme, George Airmeftang, in Grundunfyde.³

Robert Layng, being fuorne, in presens of the pairtie and Assyse, and being inquyret concerning Jok Ellotes death, quhat he kenis thair of? Deponis, he is ane mercheand; being in the Kirkzaird of Hawik priking sum skynnis,⁴ and heir-ing that Jok Ellote was hingand in the steppill,⁵ come, vpon the repoirt thair of, into the steppill, quhair he saw the defunct hingand, in his awin belt; quhilk belt he cuttit, and thair being lyfe in the defunct, was brocht out, bot shortlie thaireftir he deceift.—*Robert Scott*, being examinat and solempnelie fuorne in the premisses, *est conformis precedenti, in omnibus*

VERDICT. The Assyse, all in ane voce, be the mouth of James Greiff in Bowmanehill, chancellor, ffind, pronuncet, and declairit the saidis perfonas, and ilk ane of thame, to be Cleane, innocent, and acquit of airt and pairt of the Slauchter aboue specifit.—Quhairvpon thai, and ilk ane of thame, askit actis and instrumentis.

¹ *Irons*, or fetters.

² After his commitment to prison or confinement.

³ *Nimiane*

Quigholme in Peilbrae, (now written *Whigham* or *Wigham*), and nine other 'Assyfouris' names follow.

⁴ Being a leather merchant.

⁵ The accomodation for prisoners (in England as well as Scotland) was at this period of the most wretched description. Steeples were often fitted up with fetters in their square or lower parts, riveted into the wall, where these luckless victims were detained until Trial, without any Jail allowance. In cases of Witchcraft, &c., iron collars were added; and it is highly probable that cases of suicide were by no means infrequent, owing to the desperate circumstances of these miserable creatures. See *Sir Walter Scott's Letters on Demonology*, &c.

“RODGER SCOT, Capitane of the Airmetage, Robene Ellote of Dunlabyre, Robene Ellote of Copschaw, Frances Ellote his brother,” and nine others of lesser note, “vnlawit and americiat, ilk ane of thame, in the pane of ane hundreth merkis,” for thair nocht compeirance to haif past vpone the Assyse.

Irreuerend Speeches against the King, his Council, &c.—Theft, &c.

Mar. 11.—WILLIAME TUEDIE, callit *Coill-hoill*, in Heuchbrae.

Dilaitit of airt and pairt of certane poyntis of Theft, &c. : And for certane vnreuerent and disdanefull speiches vtterit be him aganis the Kingis Maiestie, his hienes Counsell, and Justices of peax.

DITTAY against the Pannell.

FORSAMEKILL as it is statute and ordanit, be dyuerse Actis of Parliament, alswell maid in his hienes awin tyme, as in his hienes prediceffouris tyme, of guid memorie, that na maner of persone or persones presume nor tak vpone hand to vtter or geve out sclanderous, reprochefull, or tressonabill speiches, aper be woird or writ, aganis HIS MAIESTIE, his Counsell or Nobillitie, vnder the pane of deid ; as the saidis Actis at lenth beiris : Nochtwithstanding quhairof, it is of veritie, that pe said Williame Tuedie, in the moneth of December lastypast, haifing committit, ofbefoir, dyverse Oppressiones aganis findrie of his hienes peceable subiectis, and speciallie aganis Richerd Powrie, Minister at Dawik, quha haifing complenit vpone pe said Williame Tuedie to the Justices of peax within the Sherefdom of Peiblis for pe samyn, thay directit Johnne Mathiesone in Stobo, and James Russell, tua of the Constabillis of the said Scheref-dome, to summond and arreist him, to compeir befoir thame, in the Tolbuth of Peiblis, at ane certane day, to haif ourdour tane with him for the saidis Oppressiones ; quha, accoirding to pair directioun, cam and summond and arreistit pe said Williame, first in his Maiesteis name, and than in the name of pe Lordis of his hienes Secreit Counfall, and of the saidis Justices of peax, to the effect foirsaid ; nochtwithstanding quhairof, he, altogidder vmmyndfull of his deutie, first towardis his God, our Souerane lord, and Lordis of his hienes Secreit Counfallis auctoritie, and of the saidis Justices of peax, his hienes Judges and ordiner Magistrattis ; nocht only irreuerentlie, reprochefullie, and sclanderuslie vtterit and gaif vnfemlie speiches to the saidis Constables against the saidis Justices of peax, be saying that he ‘ wald nocht gif ane scab of his erse for thame ! ’ And desyret thame ‘ to cum and kifs his erse ! ’ Bot lykwayis, the said Williame, at pe same tyme, maist tressonabillie, vnreuerentlie, sclanderuslie, and vndewtiefullie said to the saidis Constables, that he ‘ wald nocht gif pe scab of his erse ’ for his sacred Maiestie and Lordis of his hienes Secreit Counsell ; and bad ‘ his Maiestie and thame cum and kifs his erse ! ’ And sua, be vttering of the saidis tressonabill, vndeutifull, vnreuerent and sclanderus speiches, he hes contravenit pe tennour of pe saidis Actis of Parliament, and incurrit the panes of death appointed aganis pe contraveneris pair of : Quhilk aucht and fould be execute vpone him, with all rigour, to the terrour and exampill of vperis. AND siclyk, being Indytit and accuset, ffor cuming, in pe moneth of November 1583, to Carrane-mouth, in Stobo-hoip, and pair thiftioullie staw,¹ rest, and away-tuik, fra tua cowmoun Thevis, xxiiij auld scheip, quhilkis war stowin² be pame furth of Cliddisdail : And for letting the saidis Thevis to frie libertie, and nocht presenting of pame to pe Justice. ITEM, ffor airt and pairt of the steilling and away-taking of ane beir stak,³ contening tuelf schevis of beir, committit in Januar, 1600 3eiris. ITEM, ffor airt and pairt of the steilling of ane quhite wedder-lamb, pertening to Williame Russell in Eistertoun of Stobo, furth of the Knovell-fald ; committit in the moneth of Junij, 1601 3eiris. ITEM, ffor airt and pairt of pe Slauchter of vmq^{le} Eduard Curres in Braidfurd, be casting of ane stane at him, quhairwith he strak him ane deidlie straik on the hert ; be the quhilk straik, he tuik bed and dwynet in pe space of ane 3eir, and in end deceissit of pe said hurt ; committit in Junij, 1596. ITEM, ffor airt and pairt of the steilling of ane blak 3eild⁴ kow, fra James Foulden in Harro of

¹ Stole.

² Stolen.

³ Stack of barley.

⁴ Barren ; not giving milk.

Stobo, furth of the Hammer-bank, callit the Braid-flak-heid, in the moneth of November, 1607 3eiris. ITEM, ffor airt and pairt of the steilling fra Patrik Mathiesone, in Harro, of ane quhyte 3ow,¹ furth of pe grund of Harro, in the moneth of December, 1607 3eiris. ITEM, for dryveing to ane bucht² at pe Blak-hill-stell, in Harro-heid, of aucht 3owis, pertening to Johnne Alexander, in Harro-heid: And ffor the thiftious clipping of the said aucht scheip, and steilling and away-taking of the hail aucht fleiffes of woll; committit in the moneth of Junij, 1602. ITEM, ffor airt and pairt of the steilling, cutting-doun, and away-taking of tuelf grit allour-treyis,³ furth of Dawik-woid, in the moneth of August, 1607 3eiris. ITEM, ffor airt and pairt of the Murthour and Slauchter of Mathiesone, his spoufe, be striking her in dynerfe pairtis of hir body, quhairof scho deceiffit paireftir. ITEM, ffor Cowmone Thift, Cowmone Reffet of Thift, outputting and inputing of Thift fra land to land, fra cuntrie to cuntrie, baith of auld and new.

PERSEWAR, Sir Thomas Hammiltoun of Byres, kny^t, Aduocat to our fouerane lord.

PRELOCUTORIS for the pannell, Mr Laurence Mcgill and Mr David Aytoun, Aduocatis.

It is allegit, that the pannell aucht to haif bene citet vpone xv dayis wairning. It is anfuerit, aucht to be repellit, in respect the pannell is brocht furth of waird to the Bar; quha hes bene wairdit this foure monethis for the crymes lybellit.—It is allegit that *Johnne Mathiesone* can nocht pas vpone this Assyse, becaus he is pairtie and vpgeter of the Dittay, and is Constable, to quhome the allegit speiches was vtterit. Aucht to be repellit, in respect of the perfute at the instance of the Minister of Dawik, quha perfewit the pannell afor the Counsell, for injurie done; and the said Johnne Mathiesone was alredie reffaut Witnefs, and examinat be the Counsell; and sa may be ane Assyfour.⁴

ASSISA.

Johnne Mathiesone, Constable of the parochin of Stobo; James Russell, Constable thair; James Rammage, Constable thair; Johnne Reidschaw in Wester Hoprew; Adame Russell, smyth thair.⁵

The Aduocat, for verificatioun of the Dittay, &c., producet ane Decreit of the Lordis of Secreit Counsell, finding the speiches aboue writtin to be cleirlye provin; and protestit for Wilfull Errour, in caise thay Acquit.—The pannell askit instrumentis, that nane compeir to sweir the Dittay.

VERDICT. The Assyse, all in ane voce, be the mouth of the said Johnne Mathiesone, chancellor, ffind, pronuncet, and declairit the said Williame Tuedie to be fflylit, culpable, and convict of the sclanderus, reprocheful, and vnreuerent speeches vtterit be him aganis his Maiestie, his hienes Secreit Counsell and Justices of the peace, in maner specifcit and contenit in the first Article of his Dittay, and Decreet of the Lordis of Secreit Counsell, producet, for verificatioun thairof: And as to the remanent crymes aboue writtin, contenit in the said Dittay, ffind, pronuncet, and declairit the said Williame to be Cleane, innocent, and acquit thairof.—Quhairvpone the said Williame askit instrumentis.

¹ Ewe.

² 'Ewe-bucht,' a pen or fold, where sheep are sheltered at night.

³ The *aller*

or alder-tree. ⁴ The admission of this person and his fellow-Constables, was contrary to every principle of justice; and very strongly shows how extremely arbitrary the proceedings of the Court were, at this period.

⁵ Ten other names are inserted, but they were persons of no note.

THE Justice continewis the pronunceatioun of Dome, to ffryday next, that in the meane tyme he may tak advyse with the Lordis of Secretit Counfell thairanent.

(Mar. 13.)—SENTENCE. The Justice, with advyse of the Lordis of his hienes Secretit Counfell, be the mouth of Alexander Kennydie, dempster of Court, decernit and ordanit the said Williame Tuedie, in Heuchbra, to be SCURGET through the Burgh of Edinburgh: And thaireftir to be BANISCHET furth of his Maiesteis haill dominionis: And nawayis to returne agane within the samyn, vnder the pane of hanging to the deid, but¹ forder Dome: And being scourget throw the towne, that the Magistratis of Edinburgh returne him bak agane to his waird, within thair Thevis-hoill, thairin to remane quhill ane schip be provydit to transpourt him furth of his Maiesteis dominions, in maner foirsaid.

Slaughter.

Mar. 13.—ALEXANDER FRENCHÉ, Tutour of Thorniedykis,² and James Wicht, at Gordoun-mylne, his sifter-sone.

Dilaittit of airt and pairt of the Slauchter of vmq^{le} Johnne Cranftoun, brother to Patrik Cranftoun of Corbie; committit be thame vpone the grund and landis of Boun, in the Merse, vpone the tent day of Februare lastbypast, be wounding of him in the heid, leg, and dyuerse vtheris pairtis of his bodie, to the effusioun of his bluid in grit quantitie: Off the quhilkis straikis and deidlie woundis the said vmq^{le} Johnne nevir thaireftir convalescit: bot, vpone the first day of Merche instant, depairtit this lyfe, of the saidis hurtis and woundis.

PERSEWAR, Patrik Cranftoun of Corbie, as brother.

The persewar, be his grit aithe, declairis that he hes most caus to persew: And fueris the said Dittay to be of verritie, and takis instrumentis thairupoun; and Protestis for Wilfull Errour, gif the Assyse Acquit. As also, for verificatioun thairof, haifing vset and producet the Depositiones of certane famous Witnesses, quhilk was oppinlie red in Judgement.

VERDICT. The Assyse, all in ane voce, be the mouth of Hew Bell in Blithe, chancellor, stand, pronuncet, and declairit the said James Wicht to be ffylet, culpable, and convict of the crewal and vnmerciefull Slauchter of the said vmq^{le} Johnne Cranftoun. AND siclyk, for the maist pairtis, Declairit the said Alexander Frenché, to be ffylet, &c.—SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair, thair heidis to be strukin frome thair bodeis; and all thair moveable guidis to be escheit and inbrocht to his Maiesteis vse, as convict, &c.

¹ Without.

² See the Trial of Sir Patrick Chirnesyde of East Nisbet, and others, Nov. 8, 1616, for Forcible Abduction and Marriage of Adam Frenché of Thornydykes, &c.

Raid of Glenfrwne—Fire-raising—Slaughter.

May 8.—DOUGALL M^cGREGOUR alias *Dougall M^ccandochie*, Callum M^cgregour callit *M^ccalexter scoir*,¹ and Duncane M^ccarlich Culzame M^cgregour.

Dilaitit for being in companie with THE LAIRD OF M^cGREGOUR and his complices, at the Raid and ffeild of Glenfrwne,² in the moneth of ffebruare 1603 yeiris, aganis the Laird of Lufe, his kyn and freindis: And for being in cunpanie with the Laird of M^cgregour, at the burning of Barnehill, pertening to Colene Campbell of Laweris,³ quhair thai flew nyne men and thre bairnes; Robert Abroche M^cgregour, and Johnne M^cfadrik, being thair with thaim.

THE Justice continewis the puting of the perfones foirfaidis to ane Assyse to Thurisday nixt.⁴—Thaireftir, the perfones on pannell, be Ordinance of the Counfall, war ordanit to be delyuerit to the Erle of Lynlythgow, and he to hald Court vpone thame, conforme to ane Commiffioun gevin to the said Erle to that effect.

Treasonable Intercommuning with John, sometime Lord Maxwell, &c.

May 16.—NINIANE AIRMESTRANG callit *Ninianes Thome*, sone to Thomas Airmestrang; and Johnne Amulliekyn, in Cruikis.

Dilaitit ffor the tressonabill Refset, supplie, Intercowmoning, and accompaneing of JOHNNE, sumtyme LORD MAXWALL,⁵ his Maiesteis declairit Tratour, fforfalt in Parliament, for dyuerse crymes of Treafone and Lesmaiestie, at lenth specifeit and contenit in the proces and dome of fforfaltour deducet aganis him: And namelie, the said Johnne Amulliekyn, for Refsetting, Suppleing, and Intercowmoning with the said sumtyme Lord Maxwell, within his awin duelling hous in the Cruikis, and in his barne thairof, vpone the tuentie fax day of Apryle last-bypast; at the quhilk tyme, he haifing ressauit fra the said sumtyme Lord Maxwell the fowme of ten pundis; he, for obedience of the said Lord Maxwell's directioun, past thairwith vpone the morne thaireftir to the Toun of Dumfreis, to the said Niniane Airmestrang, quhair thay bocht ane hagbut and ane pair of schone,⁶ quhilk was delyuerit be the said Johnne Amulliekin to the said Niniane, to be gevin to the said sumtyme Lord; conforme to the said Johnne Amulliekyn his Depositioun, maid be him in prefens of my Lord Chancellor, and vtheris Lordis of his Maiesteis Previe Counsell: AND siclyk, the said Niniane, for Intercowmoning and keiping companie with the said Johnne, sumtyme Lord Maxwell,

¹ M^callaster scoroch, q. d. *buck-toothed*.

² See Jan. 20, 1604.

³ This person is understood to have been Colin Campbell of ABERUCHILL, and the *Barnehill*, which is here stated to have been burned, is likely to have been some appendage of that property.

⁴ In consequence of the subsequent order, no further procedure took place before the High Court of Justiciary.

⁵ See his Trial, Jun. 24, 1609, &c., III., 28, &c.

⁶ Shoes.

declairit Tratour, in the said moneth of Apryle lastbypast, be the space of fyve dayis togidder, in the Langwoid and Schillingtonehill; and for bringing of ane hagbut fra James Louk, and delyuering the same to the said Lord Maxwall, his Maiesteis declairit Tratour; and bringing of the said vther hagbut, with the pair of schone ressaunt be him fra the said Johnne Amulliekyn, within the toun of Dumfreis, and delyuering the samyn to the said Lord Maxwall; as at lenth is contenit in thair Dittayis. IN doing quhairof, the saidis Johnne and Niniane had committit manifest Treason: And thairfoir, according to the Lawis of this realme, had incurrit the panes and pwneischment of tynsell¹ and fforfaltour of lyfe, landis, and guidis, to be inflictit vpon thame; to the terrour of vtheris.

VERDICT. The Assyse, be the mouth of Dauid Bailzie, burges of the Cannogait, chancellor, ffand, pronuncet, and declairit, all in ane voce, the saidis Johnne Amulliekyn, and Niniane Airmestrang, and ather of thame, to be ffylit, culpable, and convict of the crymes aboue specifeit in thair Dittay; and that in respect of thair awin Judiciall Confessioun and Depositiones producet.—SENTENCE. To be tane to the mercat croce of Edinburgh, and thair to be hangit vpon ane gibbet, quhill thai be deid: And all thair landis, heritages, guidis, and geir, gif thai ony haif, to be fforfaltit and escheit to his Maiesteis vse, as convict, &c.

‘Unbesetting the hie-way’—Slaughter.

JUN. 3.—GAWIN HORNE in Inner Kethie, and Isobel Jak, mother to the said Gawin.

Dilaitit, accusit, and persewit, that thei with their complecis, being bodin in feir of weir, with swordis, durkis, and vther vapones *invasue*, laitlie, vpon the faxt day of Januar lastbypast, haifing consaunt ane deidlie feid, rancour, and malice causles, aganes wmq^{le} Patrik Low in Naderdaill, came vnder silence and clud of nycht to the toun of Nether Kethie, quhair he was going hame to his duelling hous, in maist peeciabill maner, vnder Godis peax and our souerane lordis, and thair Unbeset his hie-way and passage,² and crewallie Invaudit him for his Slauchter, hurt and voundit him in his body and breist, with durkis and swordis, to the effusione of his bluid in grit quantitie: Of the quhilkis hurtis he newer convalessit, bot continewing bedfast in grit dollour and diseis thairrof, vnder the cuir of chirurgéanes, be the space of fourtein dayes, or thairby; quhill at last, the said wmq^{le} Patrik, vpon the twenty day of the said moneth of Januar, depairtit this lyfe: And swa wes crewallie and vnmercifullie slane be thame; and thei and ather of thame wer airt and pairt of the said crewall Slauchter.

¹ Loss; deprivation.

² Waylaid; lurked, or lay in ambush for, for the purpose of ‘besetting.’ See various Trials in this Collection, where this phrase repeatedly occurs. The highway was likewise said to be ‘unbeset,’ when one party blocked up the road with his retainers, for the purpose of *daring* his rival to pass—or to give battle, and thus force a passage, if he could.

PERSEWAR, Andro Low as fone. PRELOCUTOUR for the persewar, Mr Williame Livingstoun.
PRELOCUTOUR for the pannell, Mr Johnne Ruffell, Aduocat.

Protestis for Wilfull Errorr in caise they Acquit.

Mr Johnne Ruffell takis instrumentis, that thair is nane to sweir the Dittay bot ane young boy of saxtene yeir awld ; and swa can mak na faith.—Produces ane instrument subferyuit be the Justice of Peax and the Constabill, for verificatioun of the Slauchter of vmq^{le} Patrik Low and cleiring of the samyn, subferyuit be the said Constabill, Johnne Innes of Knokcorth, ane of the Constabillis of peax ; and schawis that Williame Smairt confessit that he hurt and voundit the said vmq^{le} Patrik.—Quhilk cryme the pannell alluterlie denyit.

VERDICT. The Assyse, be the mouth of George Leslie in Drunblair, chanceler, for the maist pairt, ffand, pronuncit, and declairit the saidis Gawin Horne and Issobell Jak to be Clein, innocent, and acquet of airt and pairt of the said Slauchter.

Abiding from the Raid of the Isles.

Jun. 5.—ROBERT MAXWALL of Potterak, Alexander Fergusone of the Yle, Johnne Charteris in Redingwoid, Johnne Wallace in Carnezeill, Thomas Edzer in Holme, and Mr Samuell Kirkpatrik.

Dilaitit for Contravening the Proclamatioun in abyding fra the Raid of the Yles, in anno 1608.

PERSEWAR, Andro Lord Stewart of Vchiltrie.

My Lord Vchiltrie passis fra perfute of Mr Samuell Kirkpatrik. He also passis from the pursuit of *Hew Douglas* and *Thomas Douglas in Dalvene*.—*Williame Greir* provin to be seik, be the Depositioun of Johnne Broun, Minister of Glencairne.—*James Fergusoun of Crochedow*, provin to be seik, be the said Ministeris Depositioun.

THE Justice continewis this matter to the morne, *in eodem statu quo nunc est*.

Jun. 6.—IN respect na pairtie compeiris this day to insist in thair perfute, Protestis for thair cautioneris releif ; and that thai be nocht charged or trubillit for the said allegit cryme, in ony tyme cuning. And thairupoun askit instrumentis.

Mutilation and Demembration.

Jun. 12.—WILLIAME RUTHERFURD of Synewallis, and George Well his seruand.

Dilaitit for the Mutilatioun and Demembring of James Weir, seruitour to Williame Weir in Softlaw ; committit in ffebruar 1611, of the forncest finger of his left hand.

PERSEWER, James Weir.

PRELOCUTORIS in defence.

Sir Robert Stewart, Mr Johnne Rutherford, Mr Johnne Ruffell, Mr Johnne Dawling.

JAMES WEIR, feruitour to Williame Weir in Softlaw, Dilaitit of airt and pairt of the Mutilatioun of Williame Rutherford of Synewallis of his . . . hand, at the leift of the mid-finger thairof; committit in ffebruar 1611.

PERSEWAR, Williame Rutherford of Synewallis.

PRELOCUTORIS in defence.

The Laird of Blaikwoid, The Laird of Lammington, The Laird Symontoun,
The Guidman of the Caveris, Robert Hammiltoun, Aduocat.

It is allegit be Mr Johnne Ruffell, that the Dittay is altogidder irrelevant; and thairfoir can nocht pas to ane Affyse: And as to that article of the Dittay, concerning the demembring James Weir of the finger, quhilk is the only point that fould be tryit in this Judgement, nather mutilatioun nor demembratioun is relevant; becaus, except the haill hand had bene cuttit af, it can nocht be comptit demembratioun; and the finger is nocht ane member, *sed tantum est pars membri*. It is forder allegit, that this Dittay aganis Rutherford and his man can nocht pas to ane Affyse, becaus, gif ony mutilatioun or hurting was done to Weir, the samyn was done in Rutherfordis awin defence, he being in fober maner passand out the hie-way, convoyand ane gentilman to his hors; at quhilk tyme, vnder nycht, Weir, with ane drawin fuord, invaidit Rutherford; and fa, gif ony hurt wes gevin to Weir, it was in Rutherfordis defence.—It is anfuert, that the Dittay is relevant, nochtwithstanding of the allegiance; and desyres the Affyse to cognosce, quhidder the samyn was done in Weiris defence or nocht; quhilk Weir altogidder denyis.—It is allegit be James Weir, that the lybell at the instance of Williame Rutherford aganis him can nocht pas to ane Affyse; and gif ony mutilatioun was done to the said Williame Rutherford, the samyn was done in Weiris awin defence.

Compeirit, Williame Lord Cranstoun, Commiffioner for his Maiestie, and desyret my Lord Justice, that thir tua persutes, movet in this Judgement, may be remittit to the Commiffioneris, to be tryit befor thame, feing the factis lybellit was done within the boundis of thair Commiffioun: And siclyk, feing thair is ane Court affixt to be haldin within the boundis thairof, quhair justice fall be ministrat to ony pairtie, conforme to the Lawis of this realme.

THE Justice continewis this matter to Thurisday nixt, vnto the tyme he be advyset with the Counsell, concerning my Lord of Cranstones desyre.

Lawburrows are granted at the instance of the parties against each other, viz. ‘Mr Johnne Rutherford become fouertie and Lauborris for Synlawis and his ferwand, &c. vnder the pane of ffyve hundreth merkis, and thre hundreth merkis. William Rutherford of Synlawis for the said Mr Johnne, vnder the pane of thre

hundreth merkis. And James Douglas of Todhoillis for George Weir of Blaikwoid, and for the pannell James Weir, vnder the pane of ane thowfeand pundis, and thre hundreth merkis.'

Thaireftir the Justice absolutelie, without forder continuatioun of this matter, Remittit the tryell of baith thir actiones, perfewit be ather pairtie aganis vtheris,¹ to the Commiffioneris, to be cognofcet and tryet be thame as accoordis of the Law.

Abiding from the Raid of the Isles.

Jun. 25.—ROBERT HEREIS, in Lafoun, and five others.²

Dilaitit for contravening of his Maiefties Proclamatioun, in nocht paffing forward with Andro Lord Stewart of Vchiltrie, his hienes Lieutenant, to the Raid of the Yles, in anno 1608.

PRELOCUTORIS in defence, Mr Johnne Halyday, Mr Johnne Belfis.

The perfones on pannell takis instrumentis of thair compeirance, and declairis that thay war nawayis fubiect to the tennour of the Proclamatioun; in respect thai ar nather Erles, lordis, barrones, feweris, frehalderis, or landit gentilmen; and gif the famyn can be tryit³ that thai war sic men, the tyme of the making of the faid Proclamatioun to the faid Raid, thay ar content to affigne, and be thir presentis assignis, thair haill landis and heritages to the Kingis Maieftie, &c. And in respect thair is na pairtie perfewer present to infist in thair perfute, protestis for thair cautioneris releif, and that thai be nocht callit or perfewit, for this matter, at ony tyme heireftir.

Slaughter.

Jul. 1.—ROBERT FORBES, fone to James Forbes of Mylnebowie.

Dilaitit, accuset, and perfewit by DITTAY following.—FORSAMEKILL as he, accompaneit with Williame Forbes, callit of Mylnebowie, and Patrik Forbes his brother, now rebellis and att the horne for the cryme vnderwrittin, and diueris vtheris thair complices, haifing confaut ane deidlie feid, rancour, and malice aganis the faid vmq^{le} Johnne Ker, vnderftanding him to haif bene att the Kirk-toun of Skene, att the mariage of his wyfes fister; thay, vpone the fyftene day of October laftbypaft, darnit thame⁴ in the hie-way, betuix the faid Kirk-toun of Skene and the faid vmq^{le} Johnne Ker guidfatheris hous, in . . ., quhair the faid vmq^{le} Johnne had his refidence for the tyme; and thair, bodin⁵ with fwordis, dageris, gantilletis, and vtheris wapponnis invafive, lay att wait all that day for the faid vmq^{le} Johnnis hame-cumming: Lyke as, about the ewening, vnder filence and cloud of nycht, the faid vmq^{le} Johnne, lipning for na ewill, harme, or

¹ By both parties against each other.
instructed.

⁴ Hid; concealed themselves.

² This case was continued from Jun. 23.

⁵ Furnished; provided.

³ Proved;

iniurie of ony personnes, bot to haif past hame to his hous in peceabill maner, vnder Godis peax and our fouerane lordis, haifing tane his hors with ane young woman on behind him ; in his hame-passing to his said guidfatheris duelling hous, was vmbesett in the hie-way, be the foirnameit persones ; quhair, befoir ewir he wes aduertesit of thame, thay, with thair wappinnis foirsaidis, maist schamefullie strak him fra his horse, and maist crewallie invalidit him for his slauchter, gaif him twa crewall and deidlie straikis in the heid with their swordis, and hurt and woundit him in dyverse pairtis of his body ; to the effusioun of his blude in grit quantitie : Off the quhillkis crewall woundis, he newir thaireftir convaless, bot continewand in grit dolour and payne thairof, vnder the cuir of chierurgeonis, be the space of ellevin oulkis¹ or thairby thaireftir ; quhill² at last, the said vinq^{le} Johnne Ker, in the moneth of Januar lastbypast, deceissit of the saidis deidlie woundis ; and swa wes crewallie and vnmerciefullie slayne be the saidis (persones) : And the said Robert Forbes is airt and pairt of the said crewall slauchter of the said vinq^{le} Johnne Ker ; committit vpoun sett purpois, prouisioun, and foirthocht felony.

PERSEWAR,

Johnne Ker at the mylne of Clwney, as father ; Alexander Gordoun of Clwny, assister in this persute.
PRELOCUTOURIS for the pannell, Mr Johnne Ruffell, (Advocate.)

It is allegit, that this matter can nocht pas to ane Assyse, becaus in November 1611, eftir the allegit hurting, this persewar haifing intentit actionn befoir the Counsell aganis Williame Forbes of Mylnebowie, and Patrik Forbes, his brother, committeris of the slauchter, to haif hard and sene thame decernit to haif committit ane oppin and manifest Ryote and Oppressioun : ffor preving of the quhillk complent befoir the Counsell, the said Johnne Ker vsset the pannell as ane witness to verifie the same ; and sua, haifing anes vsset him as witness in the said matter, thai can nevir be hard to follow him as pairtie. For verifeing quhairrof, producet the Counsellis Act, and ane testificat of his summonding, subscryuit be Alexander Watfone, messinger. Ansuieris, thair was na witnesse led in the proces afoir the Counsell ; and albeit at that tyme na knowlege of the pannellis giltines was cleirly knawin, yet that can nocht liberat him fra pwneischment, his giltines being tryit³ thaireftir.

THE JUSTICE remittis the same to the Assyse.

VERDICT. The Assyse, be the mouth of Alexander Thome in Eister Cairny, chancellor, all in ane voce, ssand, pronunceit, and declairit the said Robert Forbes to be Cleane, innocent, and acquitt of the slauchter of the said vinq^{le} Johnne Ker ; and of airt and pairt of the said Slauchter.

¹ Weeks.

² Until.

³ Proved ; established.

Slaughter.

Jul. 3.—THOMAS MAXWALL of Arenynning,¹ brother to Alexander Maxwell of Logane; Johnne Huttone, messinger in Carlingwark.

Dilaitit of the crymis sett down in the Letteris and DITTAY following. FOR-SAMEKILL as the said Thomas, accompaneit with Johnne Maxwell, sone to the said Alexander Maxwell of Logane, now fugitiue and at the horne for the slauchter vnder writtin, vpone the tuentie nyne day of Apryle lastbypast, haifing con-sauet ane deidlie feid, rancour, and malice against vmq^{le} Johnne M^cnacht of Kilquhannatie, and vnderstanding that thair was ane tryft² affixt to be keipit at the toun of Carlingwark, betuixt him and David Maxwell of Newark, the said day; the said Thomas and Johnne, his brother-sone,³ and vtheris thair complices, bodin⁴ with fuordis, quhingeris, and vtheris wapponis inuasiue, come to the said toun of Carlingwark, quhair the said vmq^{le} Johnne M^cnacht was rydeing vp and down, attending vpone the said David Maxwell of Newwarkis cuning, in sober and quyet maner for the tyne, lipning for na harme, iniurie, or persute of ony persone, bot to haif leuit vnder Godis peax and our souerane lordis; and haifing first violentlie drawin him af his horse, and thaireftir compellit him to pas with thame in to Johnne Huttone messengeris hous, in Carlingwark, thay thair, efter dyuerse ruche⁵ and hard speiches vtterit to him, drew thair quhingeris and fuordis, and within the said hous persewit him for his slaughter: The said Thomas Maxwell grippit him be baith the airmes, and held him, vnto⁶ the tyme the said Johnne Maxwell, his brother-sone, gaif him tua sstraikis, the ane at the hert, and the vther on the left airme: Off the quhilkis, he immediatlie thaireftir deceissit; and sa was crewallie and vnmerciefullie slane be the saidis Johnne and Thomas Maxwellis: And thay and ather of thame ar and war airt and pairt of his said slauchter; committit vpone set purpois, prouisioun, and foirthocht felonie; in hie and manifest contempt of our souerane lordis auctoritie and lawis.

PERSEWARIS, Johnne M^cnacht, burges of Edinburgh, neir kynsman; (Capitane) Charles Geddes of Rachan; [Margaret Gordoun, Lady Kilquhannatie, the relict, with the thrie fatherles bairnes, kyn and friendis of vmq^{le} Johnne Maknacht of Kilquhannatie.]

PRELOCUTOURIS for the pannell, Alexander Maxwell of Logane; Johnne Maxwell of Couhaithe; Robert, Maister of Maxwell; Mr Williame Maxwell of Caveris; Mr Alexander King, Aduocat; Adame Cunninghame, Aduocat; Sir Robert Maxwell of Spottis; The Guidman of Cowhill.

The persewaris, vnderstanding Johnne Huttone to be innocent of the slauchter, passës *simpliciter* fra his persute; quhairupoune Johnne Huttone askis instrumentis.

VERDICT. The Assyse, be the mouth of James Camane of Killochie, chancellor, all in ane voce, ssand, promuncet, and declairit the said Thomas Maxwell to

¹ In the Dittay called of Aremein.
furnished.

⁵ Rough; uncouth.

² An appointed meeting.

⁶ Until.

³ Nephew.

⁴ Provided;

be Cleane, innocent, and acquit of the slauchter of the said vmq^{le} Johnne M^cnacht of Kilquhannatie, and of being airt or pairt thairof.

Alexander Maxwall of Logane become plege and fouertie for Thomas M. his brother germane—and Capitane Charles Geddes of Raehan, and Johnne M^cnacht, mercheand burges of Edinburgh, ather of thame become pleges and fouerteis for vtheris,¹ that thai and ather of thame fall obserue and keip his Maiesteis peax to all our fouerane lordis legis, and nawayis to molest or trouble thame in thair persones, guidis, or possessiones, vtherwayis nor² be ordour of law and justice; ather of thame vnder the pane of ffyve hundreth merkis.

Murder under trust—Slaughter—Theft.

Jul. 11.—PETRIE M^cGILLIEVORICHE in Brachloche.

Dilaitit of the crewall Murthour and Slauchter of Duncane M^callaster and M^cgilliecreist,³ his tua sifter-sones; and for dyuerse poyntis of thift, (viz.) For airt and pairt of the crewall and abhominabill Murthour vnder Trust of vmq^{le} Duncane M^callaster, his sifter-sonne, be schuitting him with ane hagbut throw the body; committit in the moneth of Apryle, the yeir of God I^m.Vj^c. and thre yeiris. ITEM, for airt and pairt of the thiftious steilling, at the leist ressetting, of fourtie scheip, pertening to the Guidman of Campbell-Burnet. AND for airt and pairt of the thiftious steilling of tua oxin and ane kow, pertening to Johnne Leith in Edingerroche; committit a tua yeir fyne, or thairby. ITEM, for airt and pairt of the steilling fra Adame Leith of foure oxin; committit a tuelf yeir fyne, or thairby. ITEM, for cownoun thift, cownoun resset of thift, outputting and inputting of thift, fra land to land, fra cuntrie to cuntrie, baith auld and new.

PERSEWAR, Mr Williame Oliphant of Newtoun, Aduocat to our foueran lord.⁴

ASSISA.

Williame Forbes of Monymusk,	George Jope in Cowclarachie,	Mr Johnne Horne, seruant to the
Younger,	Johnne Woid in Mylnebowie,	Laird of Frendraucht,
Mark Mawer of Mawerstown,	Andro Meldrum of Dumbrek,	Johnne Forbes, seruitour to my
Edmond Gradane in Kinloche,	Alex. Irwing, Younger of Lenturk,	Lord Forbes,
Williame Lummisden, brother to	Patrik Mortimer,	George Gordoun, seruitour to the
the Laird of Cufelnie,	Mr Patrik Grant, Minister at	Laird of Lesmoir,
Tho ^s Cowie, burges of Abirdene,	Cromedaill,	Mr Robert Elphinstoun, Tutour
		of Glak.

VERDICT. The Assyse, be the mouth of the said Williame Forbes of Monymusk, chancellor, all in ane voce, ffind, pronuncet, and declairit the said Patrik to be ffylet, culpable, and convict, according to his awin Confessioun, set down in his Depositiones, of the crymes *respectiue* aboue specified.

SENTENCE. To be tane to the mercat croce of Edinburgh, and thair, vpone ane gibbet, to be hangit quhill he be deid: And all his landis, heritages, &c.,

¹ For each other. ² Otherwise than by form of Law.
in the Dittay or proceedings of this murder of M^cgilliecreist.
time, in the Record, as Lord Advocate.

³ No mention is otherwise made
⁴ He appears here for the first

guidis and geir pertening to him, to be fforfault and efcheit to his Maiefteis vfe, as convict and culpable of the faidis thiftious and abhominable crymes.

Slaughter, &c.

Jul. 17.—SUBMISSION betwixt GEORGE (*fifth*) ERLE OF CAITHNES, (WILLIAM) LORD BERRIDAILL, his fone, and (JOHN *seventh*) ERLE OF SUTHERLAND.¹

Compeirit Mr Johnne Manfone and Mr Johnne Sinclair, feruitouris to George Erle of Caithnes, and producet ane WARRANT of THE LORDIS OF SECREIT COUNSALL, anent the deserting of the criminall perfutes appointit, *hinc inde*, aganis the Erles of Caithnes and Sutherland, to be disputit and reffonit afor the Juftice this day : off the quhilk Warrant the tennour followis.

MY LORDIS of Secreit Counsell, vnto your lordschipis humlie meanis² and schawis, we your feruitouris, GEORGE ERLE OF CAITHNES, ... LORD BORRIEDAILL, his fone, ffor our selfis, and in name of our friendis and fervandis, quho ar charget in the matter vnderwritten : That quhair, pe xvij day of Julij instant is appointit vnto ws for our compeirance befor pe Juftice and his deputis, in the Tolbuthe of Edinburgh, to vnderly the Law, for the slaughter of Neill Nathmarne ; the hurting and wounding of Johnne Gordoun of Golfpitour, Donald M^cky, fear of Far, and some vther friendis and seruandis to THE ERLE OF SUTHERLAND ; the taking and detening priffoner of Angus M^cWilliam³ ; and for certane vtheris crymes, specifeit and contenit in the Letteris raifit and execute aganis ws at pe instance of pe faidis perfones, and of his Maiefteis Aduocat for his hienes intreis : Lyk as, pe Juftice intendis to proceed in pis matter aganis ws, althocht it be of verritie, that howbeit we wer most willing and reddie to haif submittit our selfis to the Tryell of the lawis, for pe hail crymes contenit in the faidis Letteris ; and for this effect, to haif presentit our selfis in judgement befor the Juftice the day foirfaid : Zit it was your lordschipis plesour to burdene ws with ane Submissioun of all matteris questionable betwix ws and the Erle of Sutherland, and M^cky and pair freindis ; in the quhilk Submissioun, pir matteris ar speciallie and perticulerlie comprehendit : AND feing thay ar now in your lordschipis handis, vnder Submissioun, as faid is, the dyett appointit to ws afor pe Juftice aucht to desert. Heirfoir we beseik your lordschipis to geve command to the Juftice, Juftice clerk, and pair deputtis, to desert pe faid dyet, and to desist and ceife fra all proceeding pairintill, and to dispens with our personall compeirance : Quhairanent pir presentis falbe vnto thame a Warraud, and your lordschipis anfuer.

APUD ED^B, xvj Julij, 1612. *ffiat ut petitur*. AL. CANCELL^S. J. PRYMROIS.

At command of the quhilk Warrant, the Juftice ordanit baithe the dyettis appointit, *hinc inde*, to this day to desert.

Lykas, Johnne Gordoun, appeirand of Sydra,⁴ compeirand personallie in judgement, in name of Sir Robert Gordoun, brother to my Lord of Sutherland, Duncan M^cky, fear of Far, Johnne Gordoun, appeirand of Gordoun of Golfpitour,

¹ *Vid.* Jul. 30, 1612. In order to a proper understanding of this FEUD, reference may be made to *Gordon's History of the Family of Sutherland*, Edinburgh, 1813, p. 317, &c. It would occupy too much space to give a suitable outline of the various disputes in which these families were embroiled.

² Complains ; literally, *moans*.

³ *Alias* Herrach (Herragha).

⁴ The eldest son of John Gordon of Sidderay.

and producet the Letteris raifit be thame, and remanent complineris infert thair-in, aganis my Lord of Caithnes, my Lord of Berriedaill, his fone, and remanent defenderis thairin contenit; be the quhilkis, thay and everie ane of thame ar charget to find cautionn for thair compeirance befor the Justice or his deputis, this day and place, in the hour of caus, to vnderly the law for the slauchter of Neill Nathnear, vniq^{le} Airthour Smyth, taking captiue and priffoner of Angus M^cWilliam, *alias* Herrach, but Commiffioun; and dyuerfe vtheris crymes fpecifeit in the faidis Letteris—askit instruments, and proteftis for relief of the faid Sir Robert Gordoun, kny', of his cautionerie.

Slaughter—Fire-raising—Theft—Intercommuning with Clan Gregor.

Jul. 28.—GREGOUR BEG M^cGREGOUR, fone to vniq^{le} Gregour M^ceane; Gregour M^cAllaster Gal t¹ Johnne M^cinleithe;² Johnne Dow M^cgilliephadrik V^crobert; Allaster M^callaster V^ccoule; Patrik M^cgregour Craiginfche; Duncane M^ccoule cheir; Patrik Roy M^cGregour, fone to Johnne M^cphadrik, in Rannache; Gregour M^ceane V^ccoulcheir; Johnne Dow Moir M^cgregour, in Rora.

Being all presentit vpone pannell, dilaitit, accuset, and perfewit be Dittay, at the instance of Sir William Oliphant of Newtoun, kny', Aduocat to our foverane lord, for his hienes intreis, of the crymes *refpective* following, viz. *THE faidis Gregour Beg M^cgregour, Gregour M^cAllaster Galt, Johnne Dow M^cinleith, and Johnne Dow M^cgilliephadrick V^crobert, ffor airt and pairt of the trefsonabill raifeing of ffyre, burning and diftroying of the haille houffis and biggingis of Glenlocha and Achallader: And for the Slauchter of M^ccouleane, bowman to the Laird of Glenvrquhie, with dyuerfe vtheris perfones, to the number of aucht perfones: Burning of thre 3oung bairnes, dochteris to Johnne M^ckifchak: And for Steilling of fax fcoir ky and oxin furth of Glenlyoun, committit in Apryle, 1604. AND ficyk, the faidis Allaster M^callaster V^ccoule, Patrik M^cgregour Craiginche, Duncan M^ccoule cheir, Gregour M^ceane V^ccoule cheir, and Patrik Roy M^cgregour, fone to Johnne M^cfadrik in Rannache, being indytit and accuset, ffor airt and pairt of the burning and diftroying of the haille houffis and bigingis vpone the fourtie merk land of Abervrchill, pertening to Colene Campbell: And for the Slauchter of Duncane Wobfter, Johnne Seatone, Patrik Stavache, Johnne M^cgillievorich: Burning of the thre dochteris of Johnne M^ckifchak, fteilling and away-taking of aughtene fcoir ky, faxfcoir peife of horfis,³ aucht fcoir fcheip and gait, pertening to the faid Co-*

¹ The stranger, or travelled.
son of rough, or dark John.

² M^cinleiche, son of the leech, or doctor. Query, M^cindreiche?

³ One hundred and twenty *piece* of horses, as we say *head* of oxen.

lene : And lykwayis for burning of the mylne of Bolquhafter, with the haill houffis, and bigingis vpon the grund and landis of Carne, Downe, and Dillater, pertening to Robert Campbell of Glenfalloche, and of his haill houffis and bigingis vpon his landis of Ardcanknockaur;¹ committit be thame in the moneth of Junij, 1611. ITEM, the said *Gregour M^cgregour Beg*, ffor airt and pairt of the Slauchter of vmq^{le} Solomon Lany, *alias* Buchannane; committit at the Kirk of Kilmaheug, at tuentie yeir fyne, or thairby. ITEM, the said *Johnne Dow Gilliephadrik*, ffor airt and pairt of the steilling and away-taking furth of Glenfynles of ane grit heirschip² of ky and oxin, pertening to the Laird of Lufe and his tennentis : And Slauchter of vmq^{le} Johnne Reid, wobster, and Patrik Lang, iervand to the Laird of Lufe; committit vpon the saidis landis of Glenfinles, in the moneth of December, 1602. AND siclyk, the said *Johnne Dow Moir M^cgregour*, in Rora, ffor steilling and away-taking of ane grit number of guidis,³ pertening to my Lord Ogilvie, furth of Glenylay : And siclyk, for taking and keiping of the Ileand calit Ileand-Varnak,⁴ against his Maiesteis Commiffioner, and herreing⁵ and oppreffing of the haill tennentis and inhabitantis of the cuntrie about;⁶ taking and inbringing of thair haill guidis and bestiall, to the number of aucht fcoir ky and oxin, xvij fcoir fcheip and gait, quhilkis war eittin and flane be thame, wih in the said Ileand.⁷ ITEM, the haill foirnamet perfones indytet and accuset, ffor cowmone thift, cowmone reffet of thift, cowmone foirning,⁸ and oppreffing of his Maiesteis peceable and guid fubiectis; and for Intercowmoning with the rest of the furname of M^cgregouris, fugitiues and at the horne, and ffurneiffing of thame with meit, drink, and money; and keiping of tryftis, counfallis, and gadderingis⁹ with thame, contrare the tennour of his Maiesteis Proclamationes—war all put to the knowlege of ane Affyse of the perfones following.

ASSISA.

Colene Campbell, appeirand ¹⁰ of Glenvrquhie,	James Campbell, feruitour to the Laird of Lundie,	Johnne M ^c dowgall of Raray, Duncan Menzeis of Comereitè,
Johnne M ^c farlane of Arrochar,	Duncane Campbell, Capitane of	William Sterling of Achyle,
James Campbell of Laweris,	Carrik, ¹¹	Mr James Schaw of Knokhill,
Dauid Drummond, feruitour to my Lord of Perth,	Johnne Drummond, feruitour to my Lord of Perth, and Chal-	Johnne Buntene of Ardoche,
Alexander Menzeis of that Ilk,	merlane of Stratherne,	Mr James Kirk, feruitour to my
Alexander Schaw of Cambusmoir,		Lord of Argyle.

The Aduocat takis instrumentis of the fwering of the Affyse, and proteftis for

¹ Ardehenachrochtan, the now celebrated inn and farm at the Trossachs. ² Plunder, or spoil.
³ Stock, cattle. ⁴ A small Island, near the western extremity of Loch Katrine, on its north shore, opposite Portnellan. ⁵ Spoiling; plundering. ⁶ Circumjacent. ⁷ The Clau-Gregor had a garrison here, in January 1611; and were besieged by Campbell of Glenurchy's second son, Robert Campbell of Glenfalloch, who abandoned the siege, owing, as is alleged in the *Book of Taymouth*, to a storm of snow. ⁸ Taking free quarters by violence, &c. ⁹ Appointed meetings, councils, and gatherings, or convocations. ¹⁰ Heir-apparent. ¹¹ Captain of the Castle of Carrik, on the banks of Lochfyne.

Wilfull Errour, in caice thay clange the pannell of the crymes contenit in thair Dittay; in respect of the notorietie thair of, and of thair Confessioun.

VERDICT. Eftir accusatioun of the foirfaidis perfonen enterit vponne pannell of the crymes *respectiue* aboue writtin, be our said souerane lordis Aduocat, quhilk was verifeit be thair Depositiones and Confessiones, maid in presens of ane grit number of the saidis perfonen of Assyse, the said David Drummond, chancellor, in name of the said Assyse, all in ane voce, exponit, pronuncet, and declairit the saidis perfonen on pannell, in respect of thair awin Confessioun, to be flylit, culpable, and convict of the crymes *respectiue* aboue specifeit, contenit in thair Dittayis.—SENTENCE. To be tane to the Burrow-mure of Ed^r, and thair to be hangit quhill thai be deid; and thair haill landis, heritages, and annuelrentis, takis, possessiones, guidis and geir pertening to thame, to be fforfalt and escheit to his hienes vse, as convict and culpable of the saidis crymes.

Slaughter — (Pannel ordained to satisfy the Private Party, notwithstanding of the King's Remission, and 'Letters of Slains' from the Eldest Son of the Deceased.)

Jul. 29.—WILLIAME MURRAY, sone to Williame Murray in Glasfurd, sumtyme fervand to James Hammiltoun of Evindail.

Dilaitit of airt and pairt of the crewall Slauchter of vmq^{le} Archibald Stevinfoun, in Gallowfarvene; committit with schottis of hagbuttis and pistolettis, vponne the xxiiij day of Marche, I^m.Vj^c. and aucht yeiris.

PERSEWARIS, Archibald and Thomas Stevinfones, as sones; Agnes Finlay, as relict; Gawin Stevinfone, baxter, burges of Ed^r, as neir kynfinan.

The said Williame tuik him selff to our souerane lordis Remissioun, grantit to him vnder his hienes Grit Seall, vponne the nynt day of Januar lastbypast, beir-and,¹ that his Maiestie, of his speciall grace and mercie, had pardonet and forgevin the said Williame all actionn, cryme, and offence that mycht be input² to him, for airt and pairt of the Slauchter of the said vmq^{le} Archibald; and in respect thair of, and of his Maieftie's clemencie, mercie, and pardoun expressit thairin, allegit, that the Justice could nawayis put him to ane Assyse, for the said crymes.—To the quhilk it was ansuerit be the persewaris, that the foirfaid Remissioun is null, and thairfoir sould nocht be admittit; in respect, be Act of Parliament, maid be our souerane lord and thre Estaitis, in the moneth of Julij, 1593, cap. 174, it is expresse provydit, statute and ordanit, be his Maiestie and Estaitis foirfaidis, that na Respekt nor Remissioun be grantit to ony persone or perfonen, at na tyme thaireftir, that passet to the horne for thift, reif, slauchter, burning, or heirschip, quhill the pairtie skaithed³ be first satisfeit; and gif⁴ the samyn be

¹ Bearing.

² Imputed.

³ Until the party injured, &c.

⁴ If.

vtherwayis grantit, without satisfioun of pairtie, all sic Respettis and Remissions to be null, allweill be way of exceptioun as reply : And trew it is, that the pairtie persewar is nawayis satisfeit, conforme to the said Act ; and thairfor, nochtwithstanding of the foirsaid Remission, the pannell fould be put to ane Assyse, for the said cryme.

To the quhilk it was duplyt be the pannell and his prelocutouris, that the foirsaid Remission man¹ be admittit, in respect the samyn is grantit vpon the sicheit of ane Letter of Slanes gevin be Andro Stevinfoun, eldest lauchfull sone to the said vmq^{le} Archibald, and nerrest of kyn to him, with consent of Agnes Finlay his mother, and Mathow Thomesone, his vncle, beiring satisfioun maid to the said Andro for the said slachter : And for verificatioun thairof, producet the said Letter of Slanes, of the dait the penult day of Julij, I^m.Vj^c. and ellevin yeiris : And vpon the productioun thairof, togidder wth the Remission aboue writtin, askit instrumentis.

THE JUSTICE, in respect of the Letter of Slanes producet, Admittis the Remission ; and ordanis the pannell to find caution to satisfie the pairtie, conforme to the lawis of this realme.—James Murray of Guidisburne, and Gawin Murray of Vdftounheid, become cautioneris, &c.

Slaughter.

Jul. 30.—DONALD M^cKY, fear of Far, Johnne Gordoun, younger of Golfpitour, and vtheris.²

Dilaitit ffor being airt and pairt of the Slauchter of vmq^{le} Johnne Sinclair of Stirkco, and James Sinclair of Dyn, and remanent crymes contenit in the Letteris.

Compeirit personallie George Murray, seruitour to my Lady Sutherland, quha produceit ane Warrant of the Lordis of Secreit Counfall, &c. off the quhilk the tennour followis.

JUSTICE, Justice clerk, and your deputis. Qulairas, thair ar Letteris direct at pe instance of George Sincler of Dyn, as brother to vmq^{le} James Sinclair of Dyn, and mother-brother to vmq^{le} Johnne Sinclair of Stirkco, and Sir Williame Oliphant of Newtoun, kny^t, Aduocat to our souerane lord, for his hienes intreis, aganis *Donald M^cky*, fear of Far, *Johnne Gordoun*, zounger of Golfpitour, *Adame Gordoun* in Geartie, *Murdo Neill*, *Johnne Williamesoun* in Achines, *Neill Mcallaster Neillfoun* and *Donald Myller*, seruitouris to the said Donald M^cky, fear of Far, and remanent persones defenderis, pair complices, contenit in the saidis Letteris, charging thame to compeir befoir zow, in the Tolbuth of Edinburgh, the penult day of Julij instant, to vnderly the law, for airt and pairt of the Slauchter of pe saidis vmq^{le} Johnne and James Sinclairs. And seing all matteris questionable betuix THE ERLE OF SUTHERLAND and M^cKY, and pair kyn and freindis, on the ane pairt, and THE ERLE OF CAITHNES, his kyn and freindis, on the vther pairt, is be our moyane and travellis submittit ; in the quhilk Submissioun the saidis tua Slauchteris of pe saidis Johnne and James Sinclairs ar speciallie comprehendit, and pe decyding pairof restis in our handis, to be difensit be ws. It is pairfoir our Will, and

¹ Must.

² Vid. Jul. 17, 1612.

We command 5ow to DESERT þe said dyet appointit to þe said penult day of Julij instant, for tryell of þe saidis crymes, and nawayis to proceid in vnlawing of the saidis perfonis defenderis, or þair cautioneris; dispensing with thair non-compeirance, in that respect: Quhairanent þir presentis fall be to 5ow ane sufficient Warrant. Subferyuit be ws AT ED^R, the xxv day of July, 1612.

AL. CANCELL^S. LOTHIANE. S^R T. HAMILTOUN.

At command of the quhilk Warrant, the Justice ordanit the said dyet to desert, &c.

Slaughter—Bearing, Wearing, and Shooting of Hagbutts and Pistolets.

Jul. 31.—JAMES HALL of Foulebar; Mr Williame Hall, indueller in Dumbarten, his brother-germane; Thomas Stewart, at the Ferrie-boit of Inchynmane.

Dilaitit of airt and pairt of the crewall Slauchter of vmq^{le} Johnne Montgomerie, younger of Scottistoun; committit with schottis of hagbuttis and pistolettis, within the burgh of Renfrew, in the moneth of November, the yeir of God I^m.V^c. fourfcoir nine yeiris: And als, for contravening of the Actis of Parliament, in beiring and weiring of hagbuttis and pistolettis, schoiteing and flaying of the said vmq^{le} Johnne Montgomerie younger thairwith, at the particuler tyme and place aboue mentionet.

PERSEWARIS.

Johnne Montgomerie, elder of Scottistoun, as father; Sir Williame Oliphant of Newtoun, kny^t.

PRELOCUTOURIS for the pannell, Mr Alexander King, Mr Laurence McGill, Aduocatis.

Sir Johnne Buchannan of that Ilk, kny^t, become fouertie for Thomas Stewart his entrie, vpone xv dayis wairning, to vnderly the law for the slauchter aboue writtin, vnder the panes contenit in the Actis of Parliament.—The said James Hall, and Mr Williame Hall, his brother, tuik thame selffis to tua feuerall Remissiones, grantit to thame be our fouerane lord; the ane beirand, that his Maiestie, of his speciall fauour and grace, remittis and gevis pardoun to the saidis James Hall of Foulbar, and to Mr Williame Hall, his brother, for airt and pairt of the slauchter of the said vmq^{le} Johnne Montgomerie Younger of Scottistoun, and for all actioun and cryme that may follow thairupoun, or may be imput to thame thairfoir; quhilk is daitit at ffalkland, the aucht day of Julij, the yeir of God I^m.V^c. fourfcoir fyftene yeiris (1596), vnder his hienes Grit feill: The vther of the saidis Remissiones beirand, that his Maiestie, of his speciall grace and mercie, gevis pardoun and remiffioun to the said James Hall, feruitour to Archibald Erle of Argyle, and to the said Mr Williame Hall, his brother, and to ather of thame, for all cryme and offence that mycht be laid to thair charge, ffor thair beiring, weiring, or schuiting with hagbutis and pistolettis, contrair to his Maiesteis Actis of Parliament, at ony tyme bygane, preceeding the day and dait of the

same Remission, quhilk is daitit at Edinburgh, the tent day of Julij instant, I^m.Vj^c. and tuelf yeiris.

THE JUSTICE admittit the samyn, nochtwithstanding of dyuerse allegiances maid be our fouerane lordis Aduocat in the contrair; and Ordanit the saidis persones vponne pannel to find caution to satisfie the pairtie, conforme to the lawis of this realme: Quhairupone the saidis James and Mr Williame Hallis askit instrumentis: And for obedience of the said ordinance, stand, with thame selfis, Williame Sempill of Foulewoid, and James Wallace of Johnnstoun, cautioneris for thame, to satisfie the pairtie, &c.

Slaughter, committed by a Youth fourteen years of age.

Aug. 26.—JAMES MIDDELTOUN, sone to vmq^{le} Robert Middeltoun, tailzeour, burges of Edinburgh.

Dilaitit off airt and pairt of the crewall Slauchter of vmq^{le} Clement Mauchane, sone to vmq^{le} James Mauchane, mercheand, burges of Edinburgh, be streking of him with ane durk, vnder the schorte ribbis, vpwardis, on his left fyde, the lenth of aucht or nyne inches, vponne the *diaphragma*, or midreid, quhilk is ane noble pairt; committit within the burgh of Edinburgh, within the duelling hous or ludgeing of Alexander Hunter, burges thair, vponne the threttene day of August instant: Off the quhilk crewall and deidlie straik sa gevin to him, he nevir thaireftir convaleschet, bot immediatlie thaireftir taking bed within the foir chalmer of vmq^{le} Henrie Lummisden, chirurgane, to the quhilk he was led and cayreit, remanit bedfast in grit dollour and pane, vnder the cure of chirurganes, the space of nyne dayis togidder, or thairby; and at last, vponne the xxij day of August instant, about nyne houris afore none, he depairtit this lyfe, of the said deidlie straik: And sa, was crewallie flane be the said James Middeltoun, vponne set purpois, prouisioun, and foirthocht felonie; in hie and manifest contempt of our fouerane lordis auctoritie and lawis.

PERSEWARIS, Mr James Mauchane, as brother; Sir Williame Oliphant of Newtoun, kny^t, Aduocat to our fouerane lord.

PRELOCUTOURIS in defence, Mr Johnne Russell, Mr Laurence McGill.

The persewaris producet the Dittay, with the roll of the Assyse, and defyret proces.—THE JUSTICE Ordanit the Dittay to be red.

Mr Laurence McGill, prelocutour, in name of Johnne Carmichell, decone of the Tailzeouris, Alexander Miller, tailzeour to his Maiestie, and of the mother and certane vtheris the pannellis freindis, befor ony forder proces, and to eschew forder disputioun in this matter, offerit to the persewaris, that for thair satisfaction for the slauchter aboue writtin, that thai war content to caus the pannel ather imbrace the Sentence of perpetuall Banishment; or vther wayis, to thair power,¹ to mak sic vther satisfaction, baith of honour and guidis, to the

¹ To the utmost extent of their means.

perfewar, as be the advyſe of friendis ſould be inioynet to him, his lyfe being faifit.—The ſaid Mr James Mauchane, as brother, and perfewar of this mater, for anſuer declairit, that, ſeing his brother is flane, aganis the Law of God and his Maieſteis lawis and Actis of Parliament, refuſet altogidder to enter in capitulation of agrement of this matter; and thairfoir deſyret that juſtice be miniſtrat, accoirding to the lawis of this realme.

THE JUSTICE, in reſpect of the perfewaris anſuer and deſyre aboue writtin, Ordanis proces.

It was allegit be the pannell and his prelocutouris, that this matter ſould nocht pas to the knowlege of ane Aſſyſe ffor tua cauſſis; *ffirſt*, becaus he is nocht wairnit vpon fyftene dayis wairning, conforme to the Act of Parliament; *ſecundo*, he was nocht tane *in fragranti crimine*; in reſpect be the Dittay it is affirmet, that the fact was committit vpon Thurisday the xij day of Auguſt iſtant, and vpon the fyftene day of the ſaid moneth, being Setterday, was tane be the Magiſtratis of Edinburgh, as ſuſpect gilty and culpable of the ſaid fact, albeit¹ the Magiſtrattis of the ſaid bur^t had na power ſa to do, the tyme limitat to thame being expyret, viz. xxiiij houres allanerlie² eftir the committing of the fact; and ſa, he nocht being tane *in fragranti crimine*, bot within thre dayis eftir the allegit time of the committing thairof, the pannell, of all equitie, aucht to haif bene ſummond vpon fyftene dayis wairning.—It is anſuerit be my lord Advocat, that the foirſaid allegiance aucht to be repellit, in reſpect of the Dittay beiring the ſlauchter to be committit vpon the xij day, be the pannell, and he to be tane and apprehendit be the Magiſtratis vpon the xv day thaireſtir, and committit to waird; quhairin he hes remanit to this hour. And ſa, the Slauchter being committit recentlie, and the pannell tane thairfoir *in fragranti crimine*, he aucht to be put to ane Aſſyſe, but³ ony citatioun preceeding; ſpeciallie, in reſpect he is brocht fra the priſſone to the bar, be the Magiſtratis, his takeris.

THE JUSTICE Ordanis the pannell to pas to ane Aſſyſe, nochtwithſtanding of the former allegiances.

It is forder allegit be the pannell, that my lord Juſtice can nocht put the pannell to the knowlege of ane Aſſyſe, for this cryme; becaus, be ane text of the Cowmone Law, *de delictis puerorum*, the fyft of the *Decretallis*, it is ſpeciallie declairit, that minoris within xiiij yeiris of age committing crymes, ar nocht *doli capaces*, quhilk can nocht be eſtimat to be done be thame *ex certa ſcientia*; and thairfoir, can nocht be perſewit thairfoir: Lyk as, in the accident that fell furth be the ſcolleris of the Grammer-ſcole of Edinburgh, in ſlaying of Johnne M^cmorane, being ane bailzie, and in the executioun of his office, this allegiance being proponit in the perſute intentit aganis thame for the ſaid Slauchter, it was ffund, be Interloquitour of the Judge, in reſpect of thair minoritie, that thai war nocht

¹ Although.² Only.³ Without.

doli capaces, and sa wer affoilzeit,¹ and na persute followit furth aganis thame : Quhilk practique the pannell repeittis, and sayis, that in respect of the Cowmone-law and practique aboue writtin, he being minor *et non doli capax*, he can nocht pas to ane Affyse for the said cryme. *Secundo*, the slauchter aboue writtin was nocht committit vpon set purpois or foirthocht fellonie ; in respect thair was na querrell betuix the defunct and the pannell ofbefoir, bot only the defunct missing his dager, quhilk was tane fra him be Capitane Erskine, quha also was with him in companie, and was cassin vp be him vpon ane almerie heid,² the defunct, for wanting thairof, challanget the pannell, and maist outrageouflic abusit him, baith with langaige and fraikis ;³ lyk as, the pannell, finding him self sa vset, and seing ane durk vpon the buird besyde him, tuik vp the said durk and defendit him self thairwith, vpon the quhilk durk, haldin out be the pannell for his awin defence, the defunct ran him self ; and sa was the caus, him self, of his awin slauchter : And thairfoir, sould nocht pas to ane Affyse.

To the quhilk it is answert, be my lord Aduocat, that the foirsaid allegiance of minoritie sould be repellit, becaus it is nocht condiscendit be the proponer of the said James Middeltone's age, quhidder he be past xiiij yeiris or within the samyn, quhilk of necessitie man⁴ be condiscendit vpon ; becaus he being past xiiij yeiris of age, *est doli capax*, and sua may be persewit and pwneist to the daith for the slauchter : Alwayis,⁵ to mak the matter cleir to my lord Justice, it is affirmet be the persewer that he is past sevintene yeiris of aige, befoir the committing of the slauchter, as is manifest, nocht onlie be ocular inspectioun, bot be the extract of the tyme of his birth furth of the Register of the Kirk-buikis of Edinburgh, he being baptizet vpon the 23 day of Julij I^m.V^c.lxxxv.—As to the practique allegit betuix Johnne M^cmorrane and the Chancellor of Caithnes sone, and the rest of the bairnes, quhome the pannell allegis to haif bene persewit for the said Johnne M^cmorrane's slauchter, it is certane that all the bairnes that war persewit and accuset for that slauchter war within fourtene yeiris of age ; and thair was na Interlocutour gevin in that cause, bot the matter was tane vp be his Maiesteis expres Warrant.—And acceptis the Confessioun of the durk in his handis, and Slauchter thairwith.

Thaireftir the pannell, for satisfeing the desyre of my lord Aduocatis allegiance, condiscendis that he was within fourtene, at the leist fyftene yeiris of age, the tyme of the committing of the slauchter lybellit. And quhair, it is allegit and affirmet that the haill bairnes persewit for Johnne M^cmorrane's daith war within fourtene yeiris, thair is na thing producet to verifie the samyn. And last, as to the Tes-

¹ Absolved ; dismissed.
by words and blows.

² Cast or thrown by him on the top of a cupboard or press.

⁴ Must.

⁵ Nevertheless ; at all events.

³ Both

timoniall producet be the perfewar, anent the pannellis baptisime; *ffirst*, it is ansuerit, that na fayth can be gevin thairto, becaus it is nocht registrat; *secundo*, it hes na witnesss; *tertio*, of the Law, *testibus et non testimonijs credendum est*.—The perfewar repeatit his former ansver, with the Testimoniall extractit furth of the Kirkis Register.

The Justice Repellis the allegeances proponit be the pannell; and Ordanis him to be put to the knowlege of ane Assyse.

ASSISA.

Jo ⁿ Quhyte, culteller, burges, Edr,	Patrik Craig, mercheand, burges	James Cathkyn, librar, burges
Johnne Naper, tailzeour in Poket- fleve,	of Edr,	Edr,
Johnne Gilbert, tailzeour in the Cannogait,	Johnne Mitchelbill, mercheand, burges thair,	Dauid Laufone, mercheand, bur- ges thair,
Johnne Smyth, mercheand, bur- ges of Edr,	Patrik Meayne, couper, burges thair,	Thomas Cuthbertsone, culteller, Troyalus Laufone, baxter, burges
Clement Ruffell, mercheand, bur- ges thair,	Robert Young, maltman, James Halyburtoun, mercheand, burges of Edr,	of Edr, Johnne Johnnestoun, tailzeour, burges of the Cannogait.

It was allegit aganis Johnne Quhyte, that he can nocht be admittit vpone this assyse, becaus *vtro citroque gessit se hoc negotio*, in furtherance of this perfewer, in persute of the pannell; and desyret the Judge to tak his ayth thairupoun, and to purge him of partiall counsall; quha being fuorne, declairit, that he had gevin na partiall counsall in that matter: In respect quhairof, the Justice admittis him vpone the Assyse.

The Defender, eftir his accusatioun be Dittay of the Slauchter aboue writtin, vpone his conscience, denyis the samyn; and allegit, that thair was nathing producet to the Assyse to verifie his giltines of that fact.

Mr James Mauchane, perfewer, and brother to the defunct, being fuorne, gaif his ayth vpone the Dittay, that he had just caus to perfew the pannell for the slauchter of his brother: And repeittis to the Assyse the notoriety of the slauchter, in maner set down in the Dittay.—My Lord Aduocat takis instrumentis of the sweiring of the Assyse; and repeittis, for their forder instructioun, the offer maid be the pannell to the perfewer, ather to imbrace the sentence of Banishment, or vtherwayis, in honour or guidis, to mak satisfacioun to thair power; quhairin the pannell hes confest his giltines of the fact, in maner set down in the Dittay. And protestis, in respect thair of, for Wilfull Errour aganis the Assyse, in caice thay acquit.—It is allegit be the pannell, that the offer allegit maid be him to the pairtie perfewer, in the begyning of the cause, was nocht maid be him, bot be Johnne Carmichell, deacone of the Tailzeouris, and vtheris his brether, the pannellis freindis and weill-willeris, out of thair awin box,¹ quhilk offer was

¹ Out of the box or funds belonging to the Incorporation.

nocht maid to induce ony Confessioun of the cryme, *sed ad evitandum litigationem*.—My Lord Aduocat, as ofbefoir, repeitis the offer, and notorietie of the fact committit; and protestis for Wilfull Errour, gif the Assyse acquit.

VERDICT. The Assyse, all in ane voce, be the mouth of the said James Cathekyn, buikfeller, fband, pronuncet, and declairit the said James Middletoun to be ffylet, culpable, and convict of the crewall slauchter of the said vmq^{le} Clement Mauchane; committit at the tyme and in maner specifeit in the said Dittay.—SENTENCE. The Justice, be the mouth of John Dow, dempster of Court,¹ decernit and adiudget the said James to be tane to the Mercat-croce of Ed^r, and thair his heid to be strukin frome his body; and all his moveable guidis and geir, gif he ony hes, to be escheit and inbrocht to his hienes vse, as convict of the said Slauchter.²

Horse and Sheep Stealing—Theft—Perjury.

Sep. 18.—ALEXANDER IRWING, sone to vmq^{le} Gilbert Irwing of Wyfbie, James Irwing, sone to vmq^{le} Williame Irwing, brother to the said vmq^{le} Gilbert.

Dilaitit, accuset, and persewit, be Dittay, at the instance of Williame Mannecht in Echt, and Alexander Wilfone, gairdner thair, and be Sir Williame Oliphant of Newtoun, kny^t, aduocat to our souerane lord, off the feuerall pointis of Dittay following, viz.

FOR airt and pairt of steilling and away-taking of thre lynning wobbis furth of the houffis of Gulie-landis, pertening to ane pure woman thair; committit in Julij, 1610 yeiris. ITEM, ffor airt and pairt of the steilling of sevin naigis and meiris³ furth of the landis of Moufwall and Drummwre; committit in the moneth of October, 1610 yeiris. ITEM, ffor airt and pairt of the thiftious steilling and away-taking of aucht scheip furth of Dronnok, fra James Quhyte thair; committit in September, 1609. ITEM, ffor airt and pairt of the steilling and away-taking of tua naigis and ane mere, pertening to Johne Gillespie, and George Ker, in Robiequhat; committit in October, 1610. ITEM, ffor airt and pairt of the thiftious steilling and away-taking of sax oxin furth of the landis of Lochirgrane, within Drummwre; committit be the said Alexander, in the yeir of God I^m. sax hundreth and aucht yeiris. For the quhilkis feuerall crymes, the saidis Alexander and James Irwingis being arreistit to the Justice Court, haldin be the Commissioneris in the Tolbuthe of Dumfreis the systene day of October, I^m.Vj^c. and ellevin yeiris, thay, for thair non-compeirance, war declairit fugitiues and put to the horne, as rebellis and fugitiues, for the saidis crymes. ITEM, the saidis James and Alexander Irwingis war indyttit and accuset, at the instance of the saidis persewaris, ffor airt and pairt of the steilling and away-taking furth of the waird of Echt of ane gray naig, pertening to the said Williame Mannecht, and of ane broun naig, pertening to the said Alex^r Wilfoun, gairdner in Echt; committit vnder silence of nycht, vpon the first day of August lastbypast; quhilkis tua naigis war brocht Southe ower be thame to Ed^r to Thomas Lokeis hous, at the Wast-Port thairof, quhair thai war keipit for the space of thre

¹ This person appears, for the first time, as dempster, in the Record.
years' imprisonment, the party relents, and Myddiltoun goes into voluntary exile for life. This arrangement is sanctioned by the Privy Council and the Justice, to whom the matter had previously been submitted.

² See Nov. 18, 1618, when, after six
³ Riding horses and mares.

dayis and thre nychtis ; and vpon the . . . day of the said moneth, being Mononday, the ordinar mercat day of the said burgh,¹ presentit thame to the horse-mercat thair of to be fauld, quhair the saidis tua horsis war challanget in thair possession, be Airthour Forbes of Sonnabony ; and thair thairafter apprehendit and committit to waird within the Tolbuth of Ed^r, thair to haif remanit quhill thair tryell. ITEM, for airt and pairt of the steilling and away-taking of ane horse furth of the Hench of Duris, pertening to Thomas Frazer, sone to the auld Laird of Duris ; committit in Junij lastbypast. ITEM, for airt and pairt of the steilling, conceilling, and away-taking of ane blak horse, pertening to Johnne Clark in Auchrosle ; committit in the moneth of Maij, 1^m.Vj^e. and ten yeiris. ITEM, for the detestable and odious cryme of Periurie, in the periureing and mensweiring² of thame selfis, the tyme of thair examinatioun and vptaking of thair Depositiones ; the said James Irwing, be his grit aithe, affirmeing him self to be namet Johnne Poole, quhairat he still abaid quhill the contrair was verifeit vpon him, and he maid to confes the treuth thair of ; quhill was also sworne and affermet be the said Alex^r Irwing, that the said James was namet Johnne Pole. ITEM, thay and ather of thame war indytit and accuset for Cowmone thift, Cowmone resset of thift, fra the South to the Northe, and fra the Northe to the Southe, in outputing³ of the samyn.

My lord Aduocat, for verifeing the first point of Dittayis, producet ane Precept of the Commisioneris, be the quhilk the pannell ar denuncet fugitiues, for certane poyntis of thift gevin vp aganis thame ; and repeitis the sueiring of the Dittay be the tua persewaris, anent the steilling of thair tua naigis : And in respect thair of, and of the notorietye of the pannellis thiftious lyfe, protestis for Errour, gif thay acquit.

VERDICT. The Assyse, be the mouth of Johnne Abercrombie, in Leith, chancellor, ffand, pronuncet, and declairit the saidis Alexander and James Irwings to be ffylit, culpable, and convict of the haill crymes *respectiue*, aboue expremitt.—

SENTENCE. To be tane to the Castell-hill of Ed^r, and thair to be hangit vpon ane gibbet, quhill thay be deid : And all thair guidis and geir to be escheit, &c.

Slaughter.

Nov. 5.—JOHNNE HAY, servitour to James Hendersone, chirurgane.

Dilaitit, accuset, and persewit be Cristiane Adamesone, the relict of vmq^{le} Niniane Paterfones, staibler in Ed^r, and Sir Williame Oliphant of Newtoun, kny^t, Aduocat to our souerane lord, of the crymes following, viz.

FORSAMEKILL as the said Johnne Hay haifing, in the moneth of Maij bypast, hyret and conducet the said vmq^{le} Niniane Paterfones horse to Roifling-mylne, for hame-bringing of pe said James Hendersones bairne ; and pe said Niniane haifing past with him, of purpois, at his lichter⁴, to haif attendit vpon his said hors, the said Johnne Hay, be the way, directit the said vmq^{le} Niniane to ryn befoir, and to attend⁵ his cuming, becaus he was him self to repair to Lefuaid, thair to speik with his saper and vtheris his freindis ; lyk as, about ten houris at evin, the said Johnne, haifing cum to the said mylne, altogidder ouerfet with drink, and sa, nawayis being able at that tyme of the nycht, and in sa beistlie estait, to governe him self, let be to haif horfet and cayreit befoir him his said maisteris bairne, without danger of bothe pair lyves ; becaus pe said vmq^{le} Niniane maid sum oppositioun and resistance to that his intentioun, in ryding at pat tyme of the nycht ; he pairfoir, in his beistlie rage and furie, ran vpon

¹ Now held on Wednesdays.
Fr. *attendre*.

² Mansweiring.

³ Selling ; disposing of.

⁴ Alighting.

⁵ Await.

him, and with his kneis and feit possit¹ him vnder his feit, best and dang² him in þe heid, bellie, breiftis, and fydis, and brak and birfet³ his haill intrallis within him : And nocht being satisfeit with that his crewall and outrageous abuse, the said vmq^{le} Niniane, being rissin vp on his feit, the said Johnne come to him and hurrit him maist violentlie over the brae besyde þe mylne, of purposis to haif drowned him in the dambe, quhilk, be resone of þe said downeward fall, he had nocht failseit to haif done, war nocht, be þe Providence of God, he was haldin and stayit be þe stobe and rute of ane trie, his face and heid, nochtwithstanding, being maist schamefullie demanit⁴ and hurt, be occasioun of þe said fall : Off the quhilkis straikis, hurtis, and woundis, sa gevin to the said vmq^{le} Niniane, in maner foirfaid, he nevir paireftir convalessit ; bot being borne and cayreit hame to his duelling hous, tuik bed, quhairin he remanit bedfast, in grit dollour and payne, continuallie paireftir, to þe tyme of his daith ; and at lenth, vpone Lambes day⁵ paireftir, quhilk was þe first day of August lastbypast, he deceissit of þe saidis hurtis and woundis ; and at þe hour of his daith, and dyuerse tymes of befoir, during his seiknes, left his deid,⁶ and þe only cause pairof, vpone þe said Johnne : And sa was schamefullie, crewallie, and vnmercifullie flane be þe said Johnne Hay ; and he is airt and pairt of þe said crewall slauchter, committit vpone set purposis, prouisioun, and foirthocht felonie ; in hie and manifest contempt of his hienes auctoritie and lawis.

PRELOCUTORIS in defence, Gilbert Hay, as fader to the defender ;

Mr Lawrence McGill, Adame Cuninghame, Johnne Elphinstone of Schank.

It is allegit, be the pannell, that this lybell is nocht relevant, in respect the perticuler day of the moneth of the allegit committing of the fact lybellit, is nocht condiscendit vpone.—To the quhilk it is ansuerit be the persewar, that the allegiance aucht to be repellit, in respect of the Sunmondie beirand the cryme lybellit to be committit, be this defender, in the moneth of May last ; and that be the straikis gevin to the defunct, at that tyme, he deceissit thair of in August thaireftir.

THE JUSTICE, nochtwithstanding of the allegiance, in respect of the persewaris ansuer, remittis this matter to ane Assyse.

VERDICT. The Assyse, all in ane voce, be the mouth of Thomas Inglis, burges of Ed^r, chancellor, ffand, pronuncet, and declarit the said Johnne Hay to be clene, innocent, and acquit of the Slauchter of the said vmq^{le} Niniane, and of airt and pairt thair of.—Quhairupoun the said Johnne Hay askit instrumentis.

Theft.

Nov. 24.—THOMAS MOWAT, sumtyme servand to Williame Lord Keith.

Dilaitit of airt and pairt of the thiftious steilling and abstracting fra Williame Lord Keyth, his maister, of ane purse, togidder with fax scoir Angellis of gold, being thairintill, vnder nycht, furth of ane foir chalmer in Ed^r, quhair his said maister was ludget for the tyme ; committit vpone the xij day of Marche last.

This case was continued to Dec. 23, Jan. 29, Feb. 5 and 12 ; and at length

¹ Pushed. Fr. *pousser*.
expressed by '*brast*,' burst.

² Beat and struck.

⁴ Used ; treated.

³ Bruised. It is sometimes in the Record

⁵ Lammas-day, 1st August, or the Feast of St Peter ad Vincula (in bonds) ; supposed to be so named, because lambs were offered at this Mass, in commemoration of the command of our Saviour to the Apostle, 'Feed my lambs.' This metaphorical expression was, as usual, seized upon by the Romish Church, and converted into a source of substantial profit.

⁶ Death.

was prorogated to the Justice-air of 'Sterling, tertio Itineris, vel super premonitione xv dierum.' No procedure is recorded, saving these continuations, owing to the absence of Lord Keith, &c.

'Englisch Pirattis'—Piracy—Theft.

Feb. 2, 1613.—**JOHNE DAVIDSOUN**, borne at Ratleiff, besyde Lundoun,
Johnne Lowis, borne in Cairleill, baith Inglish Pirattis.

Dilaitit of Piracie and Thift, committit vpon dyuerse his Maiesteis subiectis, bothe in Ingland and Scotland, viz.

FOR the thiftious steilling of ane schip-boit furth of Ratleif; committit vpon the fourtene day of Januar last, and passing thairwith to the sie: AND for airt and pairt of the buirding of ane catche or oister-bott, and thiftious away-taking of the samyn, vnder silence of nycht; and passing thairwith, furth of the river of Thames to Liefwall, quhair thai buirdit ane Harwadge Hoy, and be way of mailterful thift and stouthe-reif, reft and away-tuik furth thairof ane piece of stuff worth threttie schillingis sterling, togidder with breid, beir, and vther victuallis: AND thairfra, foranent Harwadge,¹ persewit and buirdit ane Yarmouth bark, and tuik furth thairof thre caidis of reid heiring, and ane half barrell of quhyte heiring, with the barkis topsaill, the skipperis cloik, and ane stand of apparell, laid over with siluer laise: AND thaireftir, come to Yarmouth-Raid, quhair thai persewit and buirdit ane Scottis bark, pertening to Alexander Law in Kirkcaldie, inuidit the skipper with his companie, being thairin, hurt and woundit the said Alexander Law, skipper, in the heid: AND for dyuerse vtheris crymes of Pirracie, at lenth specifeit in the Dittay.

Quhilkis ('feuerall crymes') war confessit iudiciallie be thame to be of verritie.

VERDICT. The Assyse, be the mouth of Walter Lukkies, skipper in Leyth, chancellor, stand, pronuncet, and declairit the saidis Johnne Davidfoun and Johnne Lowis to be ffylet, culpable, and convict of the perticuler crymes of Thift and Pirracie aboue specifeit.—**SENTENCE.** To be tane to the Sandis of Leithe, within the fluid-mark thairof, and thair, vpon ane gibbet to be hangit quhill thay be deid; and all thair moveable guidis to be escheit, &c.

Fire-raising—Burning—Murder—Theft—Piracy.

Mar. 30.—**NEILL M'CLAUD**, sone-naturall to vmq^{le} Rorie M'claud, sumtyme of LEWIS.

Dilaitit of airt and pairt of the crewall Burning of dyuerse houffis, erectit and biggit be the Lairdis of Balcomie, Airdrie, Wormestoun, &c. vpon **THE ISLE OF THE LEWIS**, and for dyuerse vther crymes, set down in his **DITTAY** following.

¹ Opposite to Harwich.

NEILL MAKCLAUD, sone naturall to vmq^{le} Rorie Mcclaud, sumtyme of Lewis. 3e ar indytit and accuset, fforamekill as, from 3our verrie 3outhie, 3e being tranet vp in all maner of barbarous crewaltie and wiketnes, and following pe pernitiuous example of 3our godles parentis, kynsfolk, and cuntrie people, haifing committit innumerable oppreffiones, heirschipis, and violent factis aganis sic perfones as 3e mislyket, duelland within the cuntrie of THE LEWIS, and vtheris HIELAND YLES pairabout, to the heich offence of Almychtie God, displefour of the King's Maiestie, contempt of his royall authoritie, and violatioun of his hienes lawis; ffor forder manifestatioun of 3our extreame and vnnaturall mischancie,¹ vnderstanding that THE KINGIS most excellent Maiestie, for repressing of the abhominable villaneis, crewalteis, and oppreffiones committit be 3ow and 3our affociatis duelland within pe Yleand of the Lewis, out of his princelie wifdome, had directit ane grit number of his hienes peceable and guid subiectis furth of pe Lawlandis, bodin² with all maner of furnitour, and necessar prouisioun for pair intertenement, towardis pe said Ile of pe Lewis, thair to haif plantit and sett down Tounes and Villages, and to haif establischet all guid ordour and ciuilitie; of purpois, pairby, to haif extirpat and ruteit out pe name of barbaritie furth of thais pairtis: 3e, accompaneit with *Tormond Mcclaud*, 3our broper, and with tua hundreth barbarus, bludie, and wiket Hielandmen, soirneris and avowed malie-factouris, ancient inhabitantis and lawles perfones within the Lewis, quhome 3e conuenit to 3our selffi, to resist and withstand the purpois and godlie intentionn resoluet vpone be his Maiestie, anent pe quyeting of pat cuntrie—come, all bodin in feir of weir,³ with bowis, darloches, tua-handit-fuoirdis, hagbuttis, pistolettis, and vperis wappones *invasiue*, in oppin and hosteill maner, about a fourtene 3eir syne, or pairby, to the said Ileand of the Lewis, quhair vmq^{le} WILLIAME LORD PITTINWEME, the *Laird of Wormestoun*, the *Laird of Fingask*, the *Laird of Balcomy*, the *Laird of Airdrie*, accompaneit with dyuerse Inlandis Gentilmen, his Maieftis peceable and obedient subiectis war landit, and in planting of dyuerse houffes, pairtlie of tymmer, and pairtlie of stane and fail,⁴ for pe tyme, lipning for nothing less nor to haif bene invaidit and withstuid in thais pair vertious⁵ proceedingis; and pair, maist fearcelie invaidit and perfewit the saidis Lawland Gentilmen and pair companeis, maist crewallie murdreift and flew vmq^{le} Robert Traquair, vmq^{le} James 3oung, vmq^{le} Wedderburne, and dynerse vtheris, te the number of tuentie tua perfones, maist tressonabillie put handis in the persone of the said *Laird of Balcomie*, be taking him as captiue and prissoner: AS ALSO, maist tressonabillie raist fyre, brunt and distroyit to the grund the haill houffis erectit vp be thame, with pe victuall and furnitour of meill, malt, and vther prouisioun, to the avai⁶l of tuentie thonfeand merkis: AND pair-estir, be way of maisterfull Thift and Stouth-reiff, thiftioulle flall and away-tuik the haill horsis, ky, oxin, scheip, and vther bestiall, pertening to pe said Lauand gentilmen, to the avai⁶l of ten thowfeand pundis. And 3e, the said *Neill*, ar airt and pairt of the saidis tressonable and barbarus crymes, and was pe speciall ringleider and Chiftane, with the said *Tormond*, 3our broper, in putting of the samyn to sic mercieles executioun: quhilk 3e can nocht deny. ITEM, 3e ar Indytit and accuset, fforamekill as *Johnne Pullet* and *Robert Blair*, burgeffes of Perth, haifing past, with ane Schip pertening to thame, to *Loche-Brwme*, to the fischeing, 3e, vnderstanding pairof, come with ane number of thevis and lymmeris, 3our affociatis, to pe number of fourtie men, or pairby, all bodin in feir of weir; and haifing devydit 3our companie in tua severall companeis, and enterit in tua boittis, 3e pairestir rowit af pe land towardis the said schip; and pair, as Pirattis, Thevis, and Sea-roberis, estir discharginge of dyuerse muscattis, hagbuttis, and vperis ingynes of fyre-work at the said schip and companie pairof, 3e buirdit the samyn, intromettit with the haill furnitour, mercheandice, wyne, claithe, and vper prouisioun being pairintill, difarmet the merchandis, skipper, and marineris, and tuik af pame pair haill clething, and abul3ementis,⁷ pat tua (of) pe companie of the said schip a land, and in maist pitiefull⁸ maner murdreift and flew pe rest of the companie, to the number of sevin or aucht men; and pairestir,

¹ O. Fr. *meschancie*, *meschanceté*, wickedness.
particular quality. ² Virtuous; honourable.

³ Provided.

⁴ In warlike array.

⁶ Value.

⁷ Dress; apparel.

⁸ Piteous.

disponit vpon the said Schip, mercheandice and guidis being pairin, at pair plefour: And the said *Neill* was and is airt and pairt of the Thiftis and crewall Murthouris aboue writtin. ITEM, 3e ar indytit and accuset, ffor samekill as 3e, perseveiring in 3our former devillische and abhominable tred of lyfe, 3e, accompaneit with dyuerse thevis, foirneris, and brokin men, 3our complices, to the number of thre hundreth perones, or pairby, all bodin in feir of weir, with suordis, durkis, bowis, darloches, hagbutis, muscattis, and pistolettis, resolveing with 3our selff to putt the haill Lawland Gentilmen being than within the said Ileand of pe Lewis to pe suord, quhairby thay nor na vperis sould haif any power or commandiment in that Ileand to withstand 3our wicket attemptis, in the moneth of Apryle, the 3eir of God I^m. Vj^e. and sevin 3eiris, 3e of new agane come to that pairt of the said Ileand, quhair pe said Lawland Gentilmen had biggit dyuerse Townes and Villageis, and erectit dyuerse houffis: And the bettir to bring 3our wicket resolutionn to pas, 3e, in freindlie maner, humbilit and offerit 3our selffis to becum peceable and obedient people, and desyrit thame to accept 3ow in seruice, to quhome 3e wald be willing to do all maner of guid and steidable¹ offices, as 3e sould be imployit, in regaird 3e fand (as 3e declairit) pair cuming to pat land to be for na evill intent, bot for guid: And pe saidis Gentilmen, beleveing 3our fair promeissis, and lipning nathing les pan that ony Treafone sould haif bene practiszet be 3ow, haifing grantit 3ow sum ouersight,² 3e, with 3our associattis, maist tressonabillie, vnder trust and freindship, and in pe dark and maist quyet tyme of the nycht, enterit within the Campment belonging to the said Lawland Gentilmen, raist ffyre, and brunt and distroyit with fyre ane hous erectit and pertening to *Sir George Hay of Nether Liff*, ane vper hous pertening to *the Laird of Airdrie*, ane vper hous pertening to *the Laird of Wormestoun*, ane vper hous pertening to *Johnne Dalgleische*, with dyuerse vperis houffis, newlie buildit within the said Ileand, and alangis pe Sea coist pairof, brunt and distroyit the haill victuallis, furnitour, insicht and pleniffing being within the saidis houffis, to the avail and estimatioun of ten thousand pundis: And at pe samyn tyme, maist crewallie Murdreist and Slew vni^q^{le} *Patrik Giffert*, fervand to the Laird of Airdrie, with dyuerse vtheris fervandis and office men within the said Campment, in pair cuming out of pe saidis houffis, to save thame selffis from the rage and violence of the ffyre, being all his Maiesteis faithfull and guid subiectis: And 3e, the said *Neill*, ar and war airt and pairt of the saidis tressonable and crewall factis. AND finallie, 3e, the said *Neill*, in regaird of 3our former abhominable lyfe, feiring 3our awin apprehensioun, and haifing, for 3our gritter furetie and releiff, fled af pe Mayne and Continent-land to ane Craig callit *Birsay*, ane myle within ane Loche, quhilk 3e nammit and fortifeit with men, munitioun, and all maner of prouisioun for 3our intenenement; and haifing also tua boittis provydit, for 3ow and 3our complices passage and repassage fra pe land to pe said Craig, 3e, with 3our associattis, during 3our abyding within the said Craig, and keeping pairof, come a land, and ran dyuerse furrowes³ throw the cuntrie, and in maist thiftious maner slaw, rest, and away-tuik with 3ow, to pe said Craig, dyuerse guidis and bestial fra pe inhabitantis of the countrie about, namelie, fra *Gilliechallum McAllaster Coule* and *Gilliechallum Mcconeill*, fra aper of thame, tuelff ky and oxin; quhilkis, with dyuerse heirschips of coirne, victuall, and vther necessaris, flowin and rest be 3ow, was transportit be 3ow to pe said Craig, in maist thiftious maner; quhair-upoun 3e disponit and interteneit 3our selffis at 3our plefour: And 3e, the said *Neill*, was airt and pairt of the saidis crymes. To the taikin, 3e haif confessit the haill premisses to be of verritie, the tyme of 3our lait Examinationn, in presens of the Lordis of his Maiesteis maist honourabill Previe Counsell.

The pannell, be the interpretatioun of Andro Monro, Duncane Cunninghame, and James Logie, suorne to the trew interpretatioun of all that fall be ansuerit be the pannell,⁴ Confest the haill poyntis of Dittay producet aganis him. Quhair-

¹ Serviceable.² Oversight; superintendence.³ Forays.⁴ This is one of the earliest instances on record of sworn Interpreters being allowed to Highlandmen or foreigners. The practice had no doubt been common long before this period, though the circumstance has not been entered in the Books of Adjournal.

upounne the Aduocat tuik instrumentis. In respect of the quhilk Judiciall Confessioun, the Justice referrit the samyn to the Tryell and knowlege of ane Assyse. And for forder verificatioun of the said Neillis giltines, producet his Depositiones tane in presens of the saidis Lordis of Secreit Counfall, confessing the haill premisses to be of verritie. And in respect thair of, Protestis for Wilfull Errour aganis the Assyse, gif thay acquit.

VERDICT. The Assyse, all in ane voce, be the mouth of David Weymes, skipper in Leyth, chancellor, stand, pronuncet, and declairit the said *Neill*, be reasone of his awin Judiciall Confessioun, to be fflyet, culpable, and convict of the haill treffonable crymes of ffyre-raiseing, Burning, Murthour, and feuerall Thiftis at lenth sett down in his Depositiones, and Dittay foundit thairupounne.—

SENTENCE. To be tane to the Mercat-croce of Edinburgh, and thair to be hangit vpone ane gibbet, quhill he be deid; and thaireftir, his heid to be strukin frome his body, and affixt and fet vpone ane priket, aboue the Neper-boll Point¹ of the said burgh: And his haill landis, heritages, takis, steidingis, rowmes, possessiones, guidis, and geir, pertening to him, to be forfalt and escheit to his Maiesteis vse, &c.

Slaughter.

May 19.—JOHNE WEIR, callit of the Quhytecleuch; Mungo Weir, his brother.

Dilaitit of airt and pairt of the slauchter of vmq^{le} Johnne Hammiltoun, mercheand burges of Edinburgh; committit be thame in the moneth of September, the yeir of God I^m.Vj^c. and aucht yeiris: AND siclyk, the said Mungo Weir, for airt and pairt of the slauchter of vmq^{le} Walter Couthird, in Crawford-Johnne; committit at Lambes last, be schuiting him throw the body with ane pistolett.

PERSEWARIS, Jonet Small, the relict of vmq^{le} Johnne Hammiltoun; Williame Hammiltoun, as brother; Johnne and Mungo Couthirdis, as sones to vmq^{le} Walter Couthird.

ASSISA.

Johnne Gordoune of Earlstoun, Johnne Mcmathe of Corbank, Eduard Creichtoun of Peiltoun, Johnne Creichtoun of Craufurdstoun, Harie Gordoun of Kilsture, Johnne Masone, burges of Edr.²

Quhilkis crymes war judiciallie confest be thame to be of verritie, in presens of the said Justice and Assyse.

VERDICT. Fand the saidis Johnne and Mungo, accoirding to thair awin Judiciall Confessioun, to be fflyet and convict of airt and pairt of the said Slaughter.—SENTENCE. To be tane to the Mercat-croce of Edinburgh, and thair, thair heidis to be strukin frome thair bodeyis: And all thair moveabill guidis and geir to be escheit, &c.

¹ The Nether-Bow-Port.

² The rest of the Assise were burgesses.

Slaughter.

JUN. 2.—DAVID ERLE OF CRAWFURD; Harie Lyndsfay, callit of Blarie-fadden; Harie Stewart, sone to vmq^{le} James, Lord Stewart of Newtoun; and Johne Bellenden, fervandis to the said Erle.

Dilaitit of airt and pairt of the crewall Slauchter of vmq^{le} Sir Walter Lyndsfay of Balgaweis; committit betuix the Citie of Brechin and the Place of Edzell, vpon the xxv day of October, 1605 yeiris.¹

PERSEWARIS, Margaret Lyndsfay, as dochter; Duncane Hunter of Ballagane, hir spous; Sir Williame Oliphant of Newtoun, kny^t.

PRELOCUTOURIS in defence, Mr Alexander King, Mr Robert Lermonthe.

Continewit, of consent, to the ix day of Junij instant. My Lord of Tulliebairne² cautoun for the entrie of the pannell, this day aucht dayis, the ix *instantis*.

JUN. 9.—Margaret Lynd with consent of the said Duncane Hunter of Ballagan, hir spous, for his entreis, being baith personallie present, passis *simpliciter* fra the persute of the said David Erle of Crawford, &c., and renunes all actioun, instance, and persute quhatsumeuir, &c. And forder, producet to my Lord Justice, his Maiesteis Remmiffioun grantit to the said Erle and remanent his complices, enterit vpon pannell for the said slauchter, daitit at Newmercat, the xxiiij of Nouember, I^m.Vj^c. and aucht yeiris, togidder with tua seuerall Letteris of Slanes, the ane grantit be David Lyndsfay of Balgaweis, sone to the said Sir Walter, daitit the xx of Nouember, 1607, the vther gevin and grantit be the said Margaret, with consent of hir said spous, daitit the sevint day of Junij instant, beiring satisfioun and Assythement to be maid be the said Erle to thame for the foirsaid Slauchter, &c.

THE JUSTICE Admittit the protestatioun, and Ordanit the said dyet appointit to this day to desert; as also, that Johne, Lord Lindsay of Byres, Harie Lyndsfay of Kinfawnes, and . . . Maister of Tilliebairne, cautioneris for the said Erle, fould be fred and exonerit, &c.

Incest — Adultery.

JUN. 16.—JAMES STEWART, sone to Allane Stewart, Capitane of Dalkeith.

Dilaitit, accuset, and persewit be Sir Williame Oliphant of Newtoun, knycht, for his hienes intreis, of the cryme vnder written, viz. FORSAMEKILL as the abhominable, vyld, and filthie vyce of Incest, being sa odious and detestable in the presence of Almychtie God, and be the same eternall God his expres woird, fa cleirlye condemn'd: Thairfoir our souerane lord, out of his godlie dispositioun and zeale, be dyuerse his hienes Actis of Parliament, hes expresse flatute and ordanit, that quhatsoeuir persone or persones committis the said abhominable

¹ See this Collection, Jul. 8, 1607, and Sep. 19, 1609. ² William, *second* Earl of Tullibardine.

cryme of Incest, fall be pwneifched to the deith; as the saidis Actis of Parliament in thame selffis proportionis: Nochtwithstanding quhairof, it is of verritie, that the said James Stewart, being marrit with Aleifoun Clogie, his lauchfull spous, dochter to Johnne Clogie, cordiner, burges of Edinburgh, maist schamefullie, but¹ feir of God, or respect to our fouerane lordis lawis, hes gevin the vse of his body to Katharene Clogie, his wyfes sifter; in the monethis of Marche, Apryle, and Maij, I^m.Vj^e. and tuelff yeiris, in his and hir journeying togidder betuix the burgh of Edinburgh and the toun of Elgyn, and within the said toun of Elgyn: In the quhilk filthie and incestuous copulation, scho hes procreat to him ane bairne; committing thairthrow the detestable crymes of Incest and Adulterie, to the heiche displefoure and offence of Almychtie God, violatioun of the Kingis Maiesteis lawis, and evill exampill of vtheris to ryn in the lyk filthie and abhominable vyce, gif the samyn be sufferit to remane vnpwneift.

VERDICT. Fylet, culpable, and convict of the said cryme.—SENTENCE. To be tane to the Mercat-croce of Edinburgh, and thair to be wirreit at ane staik, quhill he be deid; and thaireftir his body to be brunt in asches: And all his moveabill guidis to be escheit, &c.

Theft—Slaughter—Fire-raising—Oppression, &c.

Jun. 22.—DUNCANE M^cPATRICK M^cGREGOUR, Allafter Cafe (Cafs)² M^cgregour, Johnne Dow M^ccondochie Vayne M^cRobert, Patrik Roy M^ccoulecheir, Ewin Crowbach³ M^cgregour, Johnne M^cneill Corroche.⁴

Dilaitit of airt and pairt of dyuerse pointis of Thift, Slauchter, Burning, and Oppressioun following, viz. THE said *Duncane M^cpatrick M^cgregour*, ffor being in cumpanie with Gregour M^ccondochie Glen, at the burning of the Castell of Achallader and landis of Glenlocha: And ffor being at the ffeild of Benvek,⁵ quhair vmq^{le} Patrik Dow M^cnab, Donald Campbell Oig, sone to Johnne Campbell, and dyuerse vtheris, to the number of sevintene persones, war flane: And ffor airt and pairt of the slauchter of vmq^{le} Allane M^cdougall, ffervand to the Laird of M^ccoule. THE said *Allaister Cafe M^cgregour*, ffor the crewall slauchter of vmq^{le} Neill M^cweyane, chopman, be streking him in the bellie with his awin knyfe, quhairof he deit: ITEM, ffor cownone soirning, thift, and oppressioun. THE said *Johnne Dow M^ccondochie Vayne*, ffor being at the ffeild of Glenfynles, and of airt and pairt of the heirschip,⁶ rest and tane away af the Landis, pertening to the Laird of Lufe and his tementis: ITEM, ffor airt and pairt of the steilling of certane ky and horsis, pertening to Walter Sterling of Ballagan, furth of the parochin of Campsie: ITEM, ffor being in companie with the rest of the

¹ Without. ² Short-tempered; passionate.
toik? ⁶ Spoil; booty; plunder.

⁵ Deformed.

⁴ Hasty; precipitate.

⁵ Bin-

CLAN-GREGOUR at the Burning of Abervrehle, and heirship brocht furth thair-of: As also, ffor airt and pairt of the Slauchter of vmq^{le} Johnne M^cgillip, ane fidler, vnder my Lord of Tulliebairne: And for cownoun Thift and soirning.¹ THE said *Patrik Roy M^ccoule-cheir*, ffor being in companie with *Duncane M^cewin M^cgregour*, callit THE TUTOUR,² at the Burning of Abervrehle, quhair fevin men war flane, thre bairnes war brunt, tuentie ky and oxin war stowin, reft, and away-tane: And for Cownone-thift, Soirning, and Oppreffioun. THE said *Ewin Crowbach M^cgregour*, ffor airt and pairt of the steilling of ane meir fra Robert M^claren: And ffor airt and pairt of the steilling of tua horsis fra M^c-Innerich, in Cregan: And for breking of ane puir mannis hous in Kynnaldie, taking of the said puir man and binding vp his eyne, and steilling and away-taking of the haill inficht pleniffing of the said hous: And for steilling of ane kow fra Donald M^cconcill Vayne, furth of Johnne Stewart Neilsones landis. THE said *Neill Corroche*, ffor being in companie with the said Duncane M^cewin M^cgregour, callit *the Tutour*, at the Burning of Abervrehle, and slauchter and heirship aboue writtin, committit be thame: And ffor affisting and taking pairt with the rebellis and fugitiues, that tuik in the Ile callit Ileand-Vernache; and in taking in to the said Ile of aucht scoir ky and oxin, aughtene scoir scheip and gait, stowin, reft, and away-tane fra the Inhabitantis of the cuntrie about: And ficyk, ffor airt and pairt of the steilling of ffyve ky fra James Chifholme, Don-drwne: And for cownone Thift, Soirning, and Oppreffioun.

War all fax put to the knowlege of ane Assyse of the persones vnderwritten.

ASSISA.

Mr James Kirk, fervand to my Lord of Argyle,	Johnne Buntene of Ardoche,	Allaster M ^c Rannald of Gargow-oche, ³
Johnne Stewart Neilsoun of Granniche,	Patrik Colquhoun of Trafeill,	George Stewart of Downe-Machreif,
Johnne Makfarlane of that Ilk,	Allaster Colquhoun V ^c James, in Calvin,	Johnne Stewart of Pitfowrie,
Dauid Drummond, callit the Chalmerlane,	Robert Alexander, notter in Drymmene,	Patrik Stewart of Balliachan,
Alex ^r Schaw of Cambusnoir,	Johnne Buchannane, fervand to my Lord of Madertie,	Dauid Chirnefyde of Poffo.

VERDICT. The Assyse, be the mouth of the said Johnne M^cfarlen of that Ilk, chancellor, fstand, pronuncet, and declairit the saidis fax persones vpone pannell,

¹ Taking free quarters by force and violence.

² The TUTOR OF GLENSTRAE, styled, in the Record of Secret Council, 21st December, 1613, 'Duncan M^cEwin of Moirinsche, Tutour of Glenstrae.' In the same Record, 31st January, 1611, he is spoken of, to the prejudice of his Ward, as 'now callit THE LAIRD;' and, in the Justiciary Record, 8th May, 1612, as 'THE LAIRD OF M^c-GREGOUR.' In a Letter from the King, from his Court at Roystoun, 23d October, 1611, to the Scottish Council, (who took it into consideration 17th November following,) he is described as 'Duncan M^cEwne, alias Duncane THE TUTOUR.' He was cousin-german of Allaster M^cGregor of Glenstray, executed at Edinburgh in 1604; and was Tutor to Gregor M^cGregor, otherwise John Murray, nephew and heir of Allaster, and who, on the King's recommendation, was restored to the Lands of Glenstray, in 1624. Duncan the Tutor assumed the protective surname of DOUGLAS, in compliment, probably, to the *Dowager Countess of Argyle*.³ Lineal ancestor of Macdonald of Keppoch. In the Record, he is sometimes styled 'the Laird of M^cRannald.'

be reffone of thair awin Confessiones, maid in prefens of the maist pairt of the said Affyse, to be ffylet and convict of the haill crymes aboue reherfit.

SENTENCE. To be tane to the Burrow-Mure of Edinburgh, and thair to be hangit vpone the cownoun gibbit, quhill thay be deid : And all thair moveabill guidis to be efcheit and inbrocht to oure fouerane lordis vse, as culpable and convict of the saidis crymes.

Fire-raising — Slaughter — Intercommuning with MacGregors — Slaughter and Houghing of Oxen, &c.

Aug. 3.—DONALD DARG¹ M^cALLANE, fervand to Johnne Calder ; Donald M^eeane V^cAllaster Bayne ; Johnne M^cfyndlay M^cquiben.

Dilaitit of the crymes *respectiue* following, viz. THE saidis *Donald Darg M^callane*, and *Donald M^eeane V^callaster Bayne*, ffor being in companie with Johnne and Donald Calderis, fones to Thomas Calder in Delneis, vpone the xxj day of Maij last, at the tressonabill Raifeing of ffyre, burning, and distroying of the Hall, kitching, and remanent office-houffis within the precink of the clois of Clwnes, pertening to Colene Campbell of Clwnes : And ffor airt and pairt of the said ffyre-raifeing and burning. As also, ffor airt and pairt of the Slauchter of four horfis and meiris, being vpone the landis of Clwnes at that tyme, pertening to the tennentis thair of : As also ffor cuming, vpoun the xxiiij day of the said moneth, bak agane to the saidis landis of Clwnes, and thair, for airt and pairt of the Burneing of the haill houffis and biggingis within the Myd-toun of Clwnes, callit the Thornyfurd, and Burning of tua barnes and ane stable, in the Nether-toun, quhilkis war left vnbrunt ofbefoir : AND siclyk, ffor airt and pairt of the crewall Slauchter and Hocheing² of threttie heid of ky, oxin, and vther bestiall, pertening to Mr Williame Campbell of Breachlie his tennentis ; committit vpone the xxv day of the said moneth of Maij last : AND ffor airt and pairt of the crewall and vnnatural Slauchter of fourtie heid of guidis, within the Forrest of Leonache ; committit vpone the Mononday befoir St Colmes-mefs last. As ALSO, the said *Johnne M^cfyndla M^cquiben*, off airt and pairt of the Slauchter of vmq^{1c} Patrik M^cgreffie Roy in Budzet, with ane durk ; committit be him a tua yeir fyne, or thairby : AND for being in cumpanie with Robert Abroche M^cgregour, his kyn (and) freindis, Thevis and Soirneris, be the space of ane moneth, in dyuerse thair wiket and thiftious deidis.

Quhilk Dittay was verifeit be thesaidis perfonas Depositiones, producet in proces.

The Aduocat repeittis the Depositiones alreddie producet, and in the Clerkis keping ; takis instrumentis of the fweiring of the Affyse ; and protestis for Wilfull Errour, gif thai acquit.

¹ Red-skinned ; ruddy-complexioned. *Roy* signifies red-haired.

² Ham-stringing.

ASSISA.

George Monro of Tarrell,	Johnne Mcgillievorich, fervand	James Borthuik of Lochehill,
Alexander Bayne of Logie,	to Colene of Bothe,	Johnne Stewart of Apyn,
Hew Campbell of Ballangowne,	James Dumbar of Bothe,	Mr James Kirk, fervand to my
		Lord Argyle. ¹

VERDICT. The Assyse, all in ane voce, be the mouth of Alexander Bayne of Logie, chancellor, ffind, pronuncet, and declairit the saidis thre perfonen on pannell, accoirding to thair awin confessione, to be ffylet, culpable, and convict of the crymes *respectiue* aboue specifreit.—SENTENCE. To be tane to the Burrowmure of Edinburgh, and vpone the cownone gibbet thair of to be hangit, quhill thay be deid; and all thair moveabill guidis to be escheit, &c.

Stouthreif—Theft—Bearing and Shooting of Hagbutts and Pistolets, &c.

Sep. 3.—GILBERT CRANSTOUN, father-brother to vmq¹⁰ Patrik Cranstoun of Corfbie.

Dilaitit of the crymes following, viz. FOR the thiftious steilling, conceilling, and away-taking, be way of Maisterfull thift and stouth reif, furth of the stable of Corfbie, of ane gray stanet horse,² pertening to Patrik Cranstoun of Corfbie, his brother sone; committit be him vpone the tent day of July last. ITEM, for airt and pairt of the thiftious steilling, conceilling, ressetting, and away-taking of tua schein, pertening to Andro Vaiche in Hammiltoun, vpone Lyne watter; and of four schein pertening to James Tuedie, his fervand; and of tua schein pertening to Johnne Stewart, in Stobo; tua vther schein pertening to James Fouldane, thair, &c.;³ flowin be the said Gibert and his complices, furth of the boundis of Hammiltoun, vpone Lyne Commoun, in the moneth of ffebruar, 1^m.Vj^c. and tuelff yeiris. ITEM, for contravening of the Actis of Parliament, in beiring and weiring of hagbutis and pistolettis, and schuitting of George Home of Bassinden thairwith, in his left thie;⁴ committit in the moneth of September, 1609 yeiris. ITEM, for Cownoun Thift, and cownoun resset of thift, outputing and inputing of thift, fra land to land, fra cuntrie to cuntrie, baith of auld and new.

VERDICT. Fylet, culpable, and convict of the hail crymes aboue writtin.—SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair to be hangit vpone ane gibbet, quhill he be deid; and all his moveable guidis to be escheit, &c.

Hearing, Saying, and Celebration of the Mass, &c.

Sep. 14.—MR ROBERT PHILLOPE, Preist; James Stewart, callet *James of Jerusalem*.

¹ The rest of the Assise were tradesmen.
other petty thefts narrated in the Dittay.

² Stallion.

⁴ Thigh.

³ It is unnecessary to detail the various

Dilaitit of faying and heiring of Messis, contrair the tennour of the Actis of Parliament, &c.

FORSAMEKILL as, be dyuerse Actis of Parliament, speciallie be the fyft Act of our fouerane lordis first Parliament, and be the first Act of his hienes fourtene Parliament, it is speciallie provydit, statute, and ordanit, that na maner of persone or persones, of quhatsumeuir degre or conditioun thay be of, preswme nor tak vpon hand to say Mefs within this kingdome, or zit heir Mefs, nor be present pair-at; vnder the pane of deid, with confiscatioun of thair haill moveabill guidis; as the saidis Actis of Parliament in thame selfis proportis: Nochtwithstanding quhairof, it is of verritie, that the said *Mr Robert Phillope*, Preist, quha ressaunt the ordour of Preistheid in Rome, haifing remanit furth of this kingome sen the 3^{er} of God I^m.V^c. fourfcoir nyntene 3eiris, studeing the Catholique Romane Religiou; in the moneth of Maij lastbypast, he returnet hame to this cuntrie, off purposis and intention (as he hes declairit) to convert faules to the Romane Religiou; sen the quhilk tyme of his hame cuming, viz. in the monethis of Maij, Junij, and Julij lastbypast, for performeing of his former Idolatrous intention, expres contrair the tennour of pe saidis Actis of Parliament, as ane Seminarie Priest, and perverter of his Maiesteis guid subiectis frome the trew Religiou, professit presentlie within pis realme, he hes seducet and conferrit with dyuerse of his hienes subiectis, doing quhat in him lay, be his fals and hereticall doctrine, to pervert pair faules from the treuth, and to convert thame to his erroneus opinioun: AND for that effect, hes, within the said space, said and celebrat, to pe number of sax or sewin Messis, in dyuerse pairtis and places of pis realme, secreitlie, in dyuerse houffis within the samyn, namelie: ANE of the saidis Messis was said be him in grit solemnitie, with his Mefs-claithes, consecrat alter, Mefs-buik, and with his vther superstitious rites and ceremoneis belanging pairto, within foure or fyve myles to the burgh of Dumfreis, Mr George Aflowane, sone to the Laird of Garroche, being Clerk pairto, and bringer in of the fyre to lycht pe candillis; quhairin the said Mr Robert hes contravenit pe tennour of the saidis Actis of Parliament, and incurrit the panes and pwnesment mentionat pairtill, quhilk aucht and sould be execute vpon him, with all rigour: LYKAS also, it is of verritie, that *James Stewart*, callit of *Jerusalem*, indueller within the burgh of Edr, being ane oppin and professit Papist, keiping and beiring companie with Jesuitis, Seminarie Preistis, and excommunicat traffiqueing Papistis, and ane cownone ressoner in all companeis for pe said Romane Religiou, aganis pe trew Religiou, professit be his Maiestie and his hienes loyall subiectis within this his kingdom, expres contrair the tennour of pe saidis Actis of Parliament, in the monethis of Januare, Februare, Marche, Apryle, Maij, Junij, Julij, August, September, October, November, December, in the 3eiris of God I^m. sex hundreth and nyne, sex hundreth ten, sex hundreth ellevin, and sex hundreth tuelff 3eiris,¹ at the leift, in ane or vther of the saidis monethis and 3eiris of God, he hes hard and gevin his bodielie presence to dyuerse Messis, said be dyuerse Preistis within this realme, in dyuerse places of pe same; and namelie, the said *James Stewart*, avowing himself to be ane Catholik Romane, in pe 3eir of God I^m.Vj^c. and nyne 3eiris, or pairby, was present at ane Mefs said be *Mr Patrick Anderson*, Jesuite, within his duelling hous of *Patrik Abercrombie* in Edr, in the *Laird of Leyis land*, belyde the buriall 3aird of the said burgh: Lyk as, the said *James Stewart*, accompaneit with the said *Johnne Logane*, portioner of Restalrig,² about ane quarter of ane 3eir pairestir, was present at the heiring of ane vther Mefs, quhilk was said in the said *James* awin duelling hous in Edr, a litill aboue the Nether-boll-Point, quhair he duelt for pe tyme, be *Johnne Burd*, Preist, quha was brocht to pe said hous be pe said *Johnne Logane* to the effect foirsaid, name being present at that Mefs bot pe Preist, the said *James Stewart* and his wyfe, with the said *Johnne Logane*, and ane vther blak man. ITEM, schoirtlie pairestir, the thrid Mefs was said within the said *James Stewartis* duelling hous in the Cowgait of Edr, quhair he duelt for pe tyme, the said *James* being present him self at the heiring and faying pairto be the Preist. BE the quhilk wilfull heiring and present-being at pe saidis

¹ 'There was a Messe the same moneth (May 16:3) in Edinburgh, in James Stewart's house, who was called *James of Jerusalem*. The Preist and the said James fled. Sundry of the company were taken and wairdit.'—*Calderwood's MS. Church Hist.* Adv. Lib.

² See his Trial, immediately following the present.

feuerall Meffis *respectiué* foirfaidis, the said James Stewart hes contravenit þe tennour of the saidis Actis of Parliament, and hes incurrit the panes and pwneischment mentionet pairintill, quhilk fould be execute vpon him with all rigour, to the terrour of vperis.

Quhilk Dittay being red, in prefens of the saidis Mr Robert Phillipe and James Stewart, and thay accuset, be vertew thairof, of the feuerall crymes aboue speci-feit ; thay and aither of thame confessit, in face of judgement, that thai had contravenit his Maiesteis lawis and Actis of Parliament, in heiring, saying, and being present at dyuerse Meffis, in maner specifeit in thair Dittay, ffor the quhilk thay offerit thame selffis, and become in his Maiesteis will : Quhairupoun instrumentis was tane be my Lord Aduocat.

Nochtwithstanding quhairof, the Justice ordanit thame to be put to the knowlege of ane Assyse.¹—The Aduocat, for verificatioun thairof, repeittit to the saidis perfonas of Assyse thair former Judiciall Confessioun maid of thair crymes, aboue specifeit ; and thairwith producet thair Depositiones and Confessiones, maid in prefens of dyuerse Lordis of his Maiesteis Previe Counfall, and of the Ministeris,² subferyuit with thair awin handis ; and tuik instrumentis vpon the production thairof.

VERDICT. Fylet, culpable, and convict of the contravening of his Maiesteis Actis of Parliament, viz. the said *Mr Robert Phillipe*, for saying of the feuerall Meffis set down in his Dittay ; and the said *James Stewart*, for heiring and being present at the feuerall Meffis, also set down in his Dittay : conforme to their awin Depositiones, and ratificatioun thairof in judgement.

THE JUSTICE Ordanit the perfonas convict to be returnet to waierd,³ thairin to remane, in strait firmance, vnto the tyme DOME be pronuncet aganis thame.

(Nov. 19.)—COMPEIRIT Sir Williame Oliphant of Newtoun, kny^t, Aduocat to our fouerane lord, and producet ane Warrant, direct fra the Lordis of his hienes Counfall to the Justice ; quhairof the tennour followis.

JUSTICE, Justice clerk, and your deputis : 3ow fall, vpon the sight heiroy, appoint ane Justice Court to be haldin within the Tolbuthe of Ed^r, at suche convenient and lauchfull day as 3ow fall think meit ; and pair call befor 3ow JAMES STEWART, callit of *Jerusalem*, and MR ROBERT PHILLOPE, Preit, and pronounce DOME aganis thame, vpon the Sentence of convictioun alreddie gevin aganis pame, as followis, to wit : Decerne the saidis James Stewart and Mr Robert Phillope to be BANISCHET his Maiesteis dominiones ; and to depairt furth pairoy, within the space of ane moneth ; and nevir to returne agane within the samyn, without his Maiesteis Licence had to that effect, vnder the pane of deid. Quhairanent þir presentis fall be 3our Warrant. AT ED^r, the xvj day of November, 1613.

AL. CANCELL^r. SANCTANDROIS. ARGYLE.

‘ DOME ’ pronounced, according to the terms of the above Warrant.

Hearing of the Mass.

Sep. 16.—JOHNE LOGANE, portioner of Restalrig.

Dilaitit for the wilfull heiring of ane Mefs, and being present thairat, in com-

¹ All tradesmen.

² Of the gospel ; clergy.

³ Prison.

panie of James Stewart, callit of *Jerusalem*; quhilk Mefs was said in James Stewartis hous, a littill aboue the Nether-boll-Poirt of Ed^r, quhair he duelt for the tyme, in the yeir of God I^m. sex hundreth and nyne yeiris, or thairby, be Johnne Burd, Preift.¹

Andro Logane of Coitfield protestis, in respect of the entrie of the pannell this day, that the vnlaw quhairin he was adiudget the last dyet,² be nocht buikit nor gevin out aganis him: And producet the Counfallis Warrant, subscryuit be my Lord Chancellor, daitit the xv of this instant, Ordaning the said vnlaw nocht to be buiket; bot the said Johnne Logane, for quhome he became caution, and now enterit vpone pannell, to be put to ane Tryell for the cryme specifit in his Dittay.

My lord Aduocat producet the Dittay; and efter reiding thair of, desyret the pannell to be put to the Assyse for the crymes specifit thairintill.

It is allegit be the pannell, that, as to the first Act of the first Parliament halden be our souerane lord and Estaitis, he can nocht, be vertew thair of, incur the pane and pwneischment of daith mentionat in the Dittay, becaus the maist that the said Act extendis to, is only daith to be inflictit for sic as the thrid tyme fall be fund culpable and convict of heiring of Mefs, or beis wilfullie present at the heiring thair of: And trew it is, that in the said Dittay, producet aganis him, thair is only mentioun maid of ane Mefs hard be him: *Igitur*, &c.—To the quhilk it is anfuerit be my lord Aduocat, that he infistis only in persute of the pannell for contravening the first Act of his Maiesteis fourtene Parliament, maid aganis wilfull heiraris of Mefs, sen the moneth of Junij 1594, quhilk is the dait of the said Act, quhairvpone the Dittay is speciallie foundit: In respect quhair of, the pannell sould be put to ane Assyse, for heiring, and wilfullie being present at ane Mefs, in maner, and at the tyme contenit in the Dittay.

It is forder allegit be the pannell, that he can nocht be put to ane Assyse for contravening the Act of the xiiij Parliament, becaus he nevir was present at ane Mefs within this realme, bot anes, sen his cuning out of Flanderis, quhilk is four or fyue yeir syne; and the Act aucht only to be extendit aganis sic as hes hard mony Messis: Lykas, the pannell was drawin to the said Mefs be senistrous informatioun, and at the instigatioun of James Stewart, quha inveitit him to his hous to the heiring thair of; and sa, in effect, come thairto contrair his will; ffor the quhilk cryme he is maist penitent, and craves first God, and nixt his Maiestie and Counfall, and the Kirk, pardoun for the samyn: Lyk as, in respect of his penitence and greif for the said offence, he was reslaui in fauour with the Kirk

¹ The Dittay is conceived in terms precisely similar to the preceding case. ² On Sep. 14. This marking is inserted—'MP. The Guidman of Coitfeild being vnlawit pis day, for nocht entrie of Johnne Logane, portioner of Restabrig, to haif bene tryit for þe said crymes; the Act of buiking þair of, be þe Counfallis Warrant, was (in respect of Johnne Loganis entrie in waird) dischargit.'

and Sessioun of the parochin quhair he duellis ; and hes senfyne borne office in the Sessioun thairrof, refoirtit continuallie to the heiring of the woird, and at all tymes was present at the celebratioun of the Communioun and ministratioun of the Sacramentis : Protesting, be God's grace, to continew ane trew and constant Professour of the trew Religioun, presentlie professit within this realme, to his lyves end ; and for the offence aboue writtin maist humlie becumis in his Maiesteis will.—It is answert be my lord Aduocat, that the allegiance maid be the pannell is na relevant cause, of the Law, to stay the puting of him to the tryell of ane Assyse, vpon the Dittay lybellit ; becaus all persones man be comptit wilfull heiraris of Mefs that cumis voluntarlie thairto, and patientlie abydis and heiris the samyn ; and it is nocht allegit be the pannell that he was compellit to cum and heir that Mefs ; nather can the samyn be sustenit, except he purge the samyn be ane violent deid compelling him to refoirt thairto : And albeit the pannell hes communicat senfyne, and borne office in the Kirk, he anis haifing wilfullie hard Mes, quhilk is ane cryme capitall, be the said Act of Parliament, na deid done be him, without his Maiesteis pardoun and Remissioun past, can purge that cryme : And forder, to mak it knawin that he was ane wilfull heirar of the Mefs lybellit, it is affirmet that he come to James Stewartis hous at the Nether-boll, and brocht with him Johnne Burd, Preist, quha cravet seruice, James Stewart then being sleiping in his bed ; and being walknit, he answert, that for releif of his conscience he was content to heir him : And than the Mefs was said in the said James Stewartis hous, quhair thairefter thay dynet altogidder. This is verifeit be James Stewartis awin Deposition, subscriuit with his hand, and heirwith producet, for verifeing the premisses.

THE JUSTICE Repellis the allegiances aboue writtin, and findis the Dittay relevant ; and Ordanis the pannell to pas to the tryell of ane Assyse, for the cryme lybellit.

VERDICT. The Assyse, all in ane voce, be the mouth of Thomas Fischer, mercheand, chancellor, stand, pronuncet, and declairit the said Johnne Logane, conforme to his awin Deposition, subscriuit with his hand, and ratificationis thairrof maid in judgement, in thair presens and audience, to be ffylet, culpable, and convict of the heiring of ane Mefs said be the said Johnne Burd, Preist, within the duelling hous of the said James Stewart ; in forme and maner, and at the perticuler tyme specifieit in the said Dittay.

THE JUSTICE Ordanit him to be tane bak agane to waird within the Tolbuth of Ed^r, thair to remane quhill DOME war pronuncet vpon his former convictione, &c.

(Nov. 26.)—The Lord Advocate produced a Warrant of the Privy Council, dated ‘ at Ed^r, the xvj day of November, 1613,’ ordaining the Justice to ‘ pro-

nunce DOME aganis him, vpon þe Sentence of Convictioun alreddie geven aganis him, as followis, viz.⁷

SENTENCE. That he mak payment to his Maiesteis Thesaurer depute and Refsauer, in his Maiesteis name, of the sowe of ane Thowseand pundis money, as a fyne imposit vpon him.

Incest and Murder.

Sep. 24.—JOHNE RAMSAY of Pryour-Lethame.

Dilaitit for the filthie and abhominable cryme of Incest, committit be him with Margaret Ramsay, his awin dochter : As also, for airt and pairt of the crewall Murthour and slauchter of vni^{le} Williame Ofett, his awin fervand ; and remanent crymes contenit in the Letteris.

Mr Vmphra Blinshell, Aduocat, as bailzie and procuratour for George, Archebischepe of St Androis, Lord of Regalitie thairof, quha exponit and declairit that the said Johnne is duelland within the boundis of the regalitie of St Androis, and thairby is subiect to the said Lord of Regalitie, his judgement and jurisdiction, for the crymes aboue specifeit : And thairfoir Protestit, that quhatsoever war done be the Justice this day, sould nawayis preiudge the said Lord of St Androis, nor his privilege of Regalitie thairof.

Michell Ramsay of the Forther vnlawit and amerciati in the pane of fyve hundred merkis, for nocht entrie of the said Johnne. And siclyk, that the said Johnne, for his nocht compeirance, be denuncet rebell and put to his hienes horne ; and all his moveabill guidis to be escheit, &c.¹

Fire-raising—Houghing of Cattle—Oppression, &c.

Nov. 5.—THOMAS CALDER, in Delneis ; Robert Caddell (Calder), sone to Johnne Caddell in Flines.

Dilaitit for airt and pairt of the coming to the landis of Clunes, pertening to Colene Campbell of Clwnes heretable, and maist tressonable and awfullie Rasing of ffyre in the hall, chalmeris, barnis, byris, and scheip-coit thairof, and burning and distroying of the samyn, and be Maisterfull Oppressioun, hoching² and slaying of thre meiris (*mares*) and ane horse, pertening to the said Colene ; committit vpoun the xxij day of Maij lastbypast, vnder sylence and cloud of nycht. AND siclyk, for cuning to the said landis of Clunes, on the xxiiij day of the moneth of Maij lastbypast, att tuell houris in the day licht, and willfullie, awfullie, and tressonabillie Rasing of ffyre, in ane toune,³ callit in Ersch⁴ *Andraane*, and in

¹ No farther notice is taken of this case, which had likely been quashed by Archbishop Gladstones, (translated from the See of *Caitness*, A.D. 1606,) or privately compromised within his Regality.

² Hamstringing.

³ Farm-steading.

⁴ Gaelic.

Scottis *Thorne-furd*; and to the Cot-toun of Clune, and Burning and distroying of the famin, togidder with the haill infycht and pleneiffing, pertening to the said Colene Campbellis tementis thair: And fwa, for committing of oppin and manifest Treaſoun.

PERSEWARIS, Colene Campbell of Clwnes; Sir Williame Oliphant of Newtoun, kny^t, Aduocat, &c.

THE Justice, of consent of the persewaris, Continewis this matte to the fyftene day of December nixt.

(Dec. 15.)—James Cuning of Alter, cautioner for the said James, vnlawit and amerciati in the pane of tua hundreth merkis, for his non-entrie; and Colene Campbell of Both, cautioner for the said Robert Calder, in the pane of ane hundreth merkis: And the pannels Decernit to be denuncet our fouerane lordis rebellis, &c., and all thair movable guidis to be efcheit, &c.

Murder—Theft—Fire-raising.

Nov. 24.—ALLANE CAMRONE *alias* M^cEandowie of Lochzell; Eugen Camrone in Caldort; and Allane Dow in Clinschphairne, &c.

Dilaitit for airt and pairt of the crewall Murthour and Slauchter of Johnne Camrone, *alias* Bodache, Allaſter Camrone of Glennevas, and vmq^{le} Ewin M^cconnell V^cewin, and remanent crymes of Murthour, Slauchter, Thift, and ffyre-raifeing, at lenth ſpecifeit and fett down in the Letteris.¹

James Gordoun of Knokaspek, as cautioner, for repoirting the Letteris, deulie execute and indorfate, purchest at the instance of Marie Neane Jeane Oig, the relict of the said Johnne; Meriorie Ewin, the relict of the said Allaſter; Marie Neane Lauchlane V^callane, relict of vmq^{le} Ewin; with the remanent kyn and freindis, producet the saidis Letteris, deulie execute, &c., be the quhilkis thai ar all denuncet rebellis, and put to the horne.

Usurpation of King's authority—Destroying green Corn, &c.

Nov. 26.—WILLIAME FORBES, elder of Monymusk; Robert, Johnne, and Mr James Forbis, his thre ſones; Johnne Forbes, callit of Burnegranes; James Geillis and Johnne Farquhar, domestik ſeruitouris to Monymusk; and George Raitt, in Coiff.

Dilaitit for vſurpation of his Maieſteis authoritie, in taking of Williame Dougat, (Duguid?) ſeruitour to George Gairdin; committit the 24 of Julij laſt: And for contravening the Actis of Parliament, in cutting of certane grene grow-and coirnes, pertening to Gilbert Menzeis of Pitfoddellis, growand vpone his landis of

PERSEWARIS, Gilbert Menzeis of Pitfoddellis; Williame Dougat, ſeruitour to George Gairdin; Sir Williame Oliphant of Newtoun, kny^t, Aduocat.

¹ The Dittays are not inserted in the Record.

THE Justice, with advyse of my lord Aduocat, Continewis this dyet to the thrid day of the Air (of Aberdeen), or foner, vpone xv dayis wairning; and Ordanis cautionn to be fund be the pannell. Plegio, Joanne Kynnaird de eodem.

Cutting and Destroying Corn.

Nov. 26.—MARGARET IRWING, Lady Pitfoddellis; Gilbert Menzeis of Pitfoddellis, hir spous, for his entreis; David Knowis, his domestik fervand; Johnne Ramfay, his greif; Johnne Philp, Williame Daveny, Williame Dougatt, and Johnne Ramfay.

Dilaitit of airt and pairt of the contravening of our fouerane lordis Actis of Parliament, in cutting and distroying of coirnes; committit in the moneth of July lastbypast.

PERSEWARIS.

Williame Forbes, elder of Monymusk; Sir Williame Oliphant of Newtoun, kny^t, Aduocat.

This case¹ also continued to the same Air. Plegio, Pitfoddellis.

Slaughter.

Dec. 1.—HEW SOMERVELL of Drun.

Dilaitit for airt and pairt of the Slauchter of vmq^{le} Johnne Bryfone, in Gilmertoun, be gevin to him of dyuerse straikis, hurtis, and woundis, with ane lang battone or girth-sling,² in his fydis, schoulderis, breist, and bellie, and dyueris vtheris partis of his body, at the dur of his duelling hous in Gilmertoun, vpone the xxiiij of September last; off the quhilkis straikis, he haifing tane bed, and remaning bedfast the space of aucht dayis, in grit dollour and pane, deceiffit thairof vpone the first day of October thaireftir.

PERSEWARIS, Agnes Mcindo, the relict; Patrik and Margaret Bryfone, as bairnes.

PRELOCUTOURIS in defence, Mr Thomas Hoip, Mr Laurence Mcgill.

It is allegit be the pannell, that the Dittay is nocht relevant, in sa far as it is nocht qualifeit thairin, that the cryme was committit vpone foirthocht fellonie; without the quhilk war condiscendit vpone, na cryme can be inferrit: And thairfoir, as the Dittay is qualifeit, it can nocht pas to ane Assyse. And forder, it is affermit be the pannell, that the said Johnne Bryfonis death nawayis proceidit vpone ony straik or hurt gevin to him the tyme lybellit; bot be the contraire, the said Johnne, that same day of the allegit reffaucing of the straikis, past to the Coilpot-hill, and thairfra with his coillis³ come to Ed^r, quhair he fauld the

¹ It is obvious that the preceding cases arose out of the deadly feuds which then raged between the families of Monymusk and Pitfoddells. No information is afforded by the Record, how these Cases terminated—but from their withdrawal to ‘the Air,’ it is likely they were compromised by the intervention of mutual friends.

² Dr Jamieson interprets this word to signify a pole from which a girth, gird, or barrel hoop is made.

³ Coals. GILMERTON, at that period, as well as now, was famous for its collieries and stone quarries, and appears to have been, even in these early times, peopled by a most barbarous and regardless race. The recent atrocious case of Rape and Murder is too fresh in the public mind to require any farther notice of the proverbially savage nature of the colliers and carters inhabiting that village. A bare allusion to the evidence adduced in that shocking Trial is more than enough to justify the preceding observation.

famyn ; and passing hame, that same nycht, to his awin hous, lay down haill and feir ;¹ and his haill famelie being visseit with the hett-fever,² be the space of ane moneth of befoir, the said Johnne being also visseit thairwith, in aucht dayis thair-efter, sa reaget thairin, that in end, at the tyme lybellit, he deceifit of the said ffever, notourlie knawin to the haill cuntrie about. And sa, can nocht pas to ane Assyse, for ony cryme set down in the summondis.

THE Justice findis the Summondis relevant, nochtwithstanding of the former allegiances : and Ordanis the famyn to pas to ane Assyse.

ASSISA.

Mr Pat. Edmestoun of Wowmet,	Nicoll Crawford, in Nether Lib-	Mr Jo ⁿ Wardlaw, in Libbertoun,
George Ramsay, Nether-houffis,	bertoun,	Symone Henderfoun, thair,
Robert Eddislaw, in Lefuaid,	Henrie Arnote, in Lefwaid,	Dauid Ramsay, in Pethheid,
Nicoll Ramsay, thair,	Michael Craufurd, at Libber-	Geo. Pacok, in Nether Libbertoun,
Gilbert Hay, thair,	toun-Kirk,	Thomas Andro, in Lefuaid.

It is allegit be the pannell (that) George Ramsay, Robert Eddislaw, Nicoll Ramsay, can nocht be ressaunt vpon his Assyse, becaus thai ar tennentis, haifing na frie landis of thair awin ; and the pannell being ane landit Gentilman, within the degrie of ane Barroune, halding his landis of Drum, and vtheris pertening to him, immediatlie of the Kingis Maiestie, fould thairfoir be tryit be his peiris, viz. be Barrones ; at the leift, the maist pairt of thame fould be in that rank ; *igitur*, &c. Repeitis the former allegiance aganis the remanent Assyfouris of the lyk qualitie.

THE Justice, vpon tryell of the said George Ramsay and remanent Assyfouris rank and estait, finding thame to be honest, substantial men, Admittis thame vpon the said Assyse.

VERDICT. The Assyse, all in ane voce, be the mouth of Thomas Andro, in Lefuaid, chancellor, stand, pronuncet, and declairit the said Hew Somervell of Drum to be Cleane, innocent, and acquit of the said slauchter.

Witchcraft—Poisoning—Treasonable Murder.

[THE CASE OF ROBERT ERSKINE, which follows, and the subsequent Trial of his three sisters, HELEN, ISOBEL, and ANNAS,³ afford very lamentable proofs of the baneful effects of an all-engrossing spirit of covetousness. There cannot be a doubt that the sordid avarice of these individuals, habitually indulged, and permitted to acquire the entire ascendancy over their minds, rapidly terminated in the perpetration of the highly revolting crimes for which their lives were justly forfeited to the offended laws of their country.

It is melancholy to reflect that these atrocious criminals, whose cold-blooded and calculating crimes form the subject of these Trials, were immediate descendants of the eminently good and pious John Erskine, Baron of Dun, and Superintendent of Angus and Mearns, one of the most active promoters of the Reformation of Religion in Scotland, whose character and public services are well known. This excellent man died Mar. 12, 1591, in the 82d year of his age, having, throughout his long and useful life, bestowed much of his time in attending to the religious and moral education of his children and

¹ Whole and sound.

² Probably the Scarlet fever.

³ See their Trial in this Collection, Jun. 22, 1614.

their numerous descendants. The Superintendent was the eldest son of John Erskine of Dun, by Margaret Ruthven, daughter of Sir William de Ruthven, first Lord Ruthven, and relict of Alexander, *second* Earl of Buchan. He married Lady Elizabeth, third daughter of David, *seventh* Earl of Crawford. John Erskine, the next Baron of Dun, married Margaret, eldest daughter of James, *fifth* Lord Ogilvy of Airlie. His son, John Erskine of Dun, married Margaret Keith, second daughter of Robert Lord Altrie, last mentioned. This Baron was succeeded by John Erskine of Dun, who married the Honourable Margaret Lindsay, daughter of Sir Alexander Lindsay, first Lord Spynie, (slain 1607,) and was probably the father of Robert and his sisters, Helen, Isobel, and Annas. David Erskine of Dun, the brother of these criminals, and father of their victims, John and Alexander Erskine, married Jean, eldest daughter of Patrick Maule of Panmure, by Margaret daughter of John Erskine of Dun.

It must therefore be obvious, owing to the high respectability of the ancient Family of Dun, and the rank and power of the numerous connexions of the pannels, that every influence must have been used for averting the stain of a public Trial and an ignominious execution ; but their crimes were of too deep a dye to admit of the public prosecutor waiving this imperative duty.

One very striking feature of this remarkable Case is, that the brother was urged forward to the perpetration of this crime by the repeated suggestions and solicitations of his sisters ; who, with desperate wickedness, goaded him forward to consent to the act. These wretched females were both the prime movers and the actors in this shocking tragedy. Their brother appears to have been a passive instrument in their hands.

It only remains for the Editor to state, that, after much research, he has only been able to procure the following notices, from an authentic source.¹

(Nov. 30, 1613.) ‘ ROBERT ERSKINE, vncle to THE LAIRD OF DYNNE, being examinat be foure of the Counfell, depute to that effect, vpon the practize of poifone aganes his tua nephewes, the brether of the Houfe of Dynne; after dyuerfe denyallis and confrontationes with fome who avowed that mater vpon him, he is come to a cleere Confession of the haill treuthe of that mater ; to wit, that he wes a deallar, confultor, and confentar to the Murthour of his tua nephewes by poyfone ; and that his thre fisteris wer the first movearis of him to that wicked deide, that therby he might atteane to the right of the leving of Dynne. Direction is gevin to the Justice to putte him to the tryall of the lawes, and Commiffion is gevin to the Erle of Mar to apprehend the three fisteris, and fome otheris gevin vp be the said Robert, as guyltie, and to prefent thame heare to there tryell.’—(Dec. 1, 1613.) ‘ Robert Erskyne wes this day execute for the practize of poifone, wherin he wes a counfellow and confentar aganes the tua bretherine of the Houfe of Dynne.’]

Dec. 1.—ROBERT ERSKYN, fone to Johnne Erskyn, appeirand of Dwn, callit *Johnne of Logy*.

Dilaitit, accuset, and perfewit, be Sir Williame Oliphant of Newtoun, kny^t, Aduocat to our fouerane lord, for his hienes intereis, of the crymes following, viz.

DITTAY *against Robert Erskyn*.

FORSAMEKILL as, be the Law of the Almychtie God, loveable Constitucionnes of all Christiane kingdomes, and Municipall Lawis of this realme, all Witchcraft, Sorcerie, Confultatioun with Witches, seiking of help or resposnes of thame, and vsfearis of Poyfone or Poyfoneable herbis, quhairthrow ony Cristiane man, woman, or bairne may take hearme, is prohibeit and discharged, vnder the pane of deid, confiscatioun of all the offendouris moveabillis, and dyuerse vtheris grevous

¹ Minutes of Privy Council Proceedings, Denmylne MSS. Adv. Library. *Balf. Annales*, II. 44.

panes and pwneischmentis, at moir lenth expressit in the saidis Lawis, Actis, and Ordinances : Nochtwithstanding quhairof, it is of veritie, that þe said Robert Erskyn, being blinded with the godles and insatiable desyre of þe landis and leving of Dwn, and knowing perfytlie that he could nevir attene to be full Laird pairof, so long as Johnne and [Alexander] Erskynis, the tuo lauchfull sones of vinq^{le} Dauid Erskin, his elder lauchfull brother, was on lyfe : ffor removeing of the quhilk impediment, vpone a pretendit miscontentement consauet be him and his thre sifteris, Iffobell, Helene, and Annas Erskinis, becaus vinq^{le} Erskyn of Dwn, quho was sone-in-law to the Laird of Pitcur, vpone his deid-bed had nominat Johnne Erskin, Minister at St Ceres Kirk, to be Tutour Testamenter to the saidis tuo 5oung boyis, his brother-sones, and that be þe said nominatioun of Tutorie, the said Robert, as nerrest agnat of bluid to thame, was defraudit of the charge of pais bairnes and pair Estait ; albeit þe said Robert his cheif discontentment was, becaus, be þe surueiving of the saidis tuo bairnes, 5our (*his*) rycht of succeßioun to the said leving was impeidit. The said Robert, pairfoir, ffor removeing of the said impediment, in his devillisch dispositioun, conuenit to him selff his saidis thre sifteris, Iffobell, Annas, and Helene, within the Place¹ of Logy, about Mydsomer, in the 5eir of God I^m. sex hundreth and ten 5eiris, and pair treited, consulted, deliberat, and resolued vpone the destruction and Murthour of þe saidis tuo 5oung childrene, his broper-sones,² be Witchcraft and Poyfoun : AND for this effect, tuo of his sifteris, haifing proponit to ane Dauid Blewhous, that gif³ he wald vndertak to get ane Witche, that, be sum finifterous meanis, wald tak away the lyves of þe saidis tuo boyis that war betuix þe said Robert and the leving of Dwn, that þe said Dauid sould ressaue for his rewaird ane posseshioun, for his lyfytyme, out of the landis of Dwn, and fyve hundreth merkis of siluer ; and promiseit to caus þe said Robert, vpone the morne paireftir, ratifie to þe said Dauid the former conditioun : Lykas, schortlie paireftir, þe said Robert, cuning to the said Dauid Blewhous duelling hous, and haifing forgadderit⁴ with him pair, he þan demandit of þe said Dauid, quhat he had done concerning the purpois inpairtit be his sifteris to him, anent þe distructioun of þe saidis tuo bairnes ? And becaus, be þe ansuer maid be him to þe said Robert and his sifteris, the said Robert could nocht get his wiket purpois effectuat be þe said Dauid Blewhous, thairvpone the saidis Annas and Helene, his tua sifteris, of the speeciall causeing, sending, hounding out, airt, pairt-taking, counsell, and devyse, past, in ane evening, fra þe said Place of Logy, over þe Cairnemouth, towardis þe Mure-aillous, and pair forgadderit with ane woman, quha namet hir self Jonet Irwing, ane notorious Witche and abuser of þe people ; and eftir conference with hir in the said purpois, thay, for accomplechment pairof, ressauit of hir ane grit

¹ Mansion-house.² Nephews.³ If.⁴ Met.

quantitie of herbis, quhilkis war brocht with thame (with iniunctioun how to vse the saidis herbis) hame to Logy. Quhilk being fene be þe said Robert, in pair handis, and he altogidder distrusting that thais herbis war hable¹ to do that wicket turne for the quhilk pai war brocht, ffor clering of his dout, he, togidder with Johnne Kirk, past over þe Month towardis the Mure-ailhous, quhair he consultit and conferrit with the said Jonet Irwing, Witche, off quhome at þat tyme he refaueit ane full resolutioun that þe herbis delyuerit be hir to his sifteris was forceable aneuche to effectuat þe former wicket turne: LYK AS, schortlie paireftir, þe said Robert, returning hame agane, he concurrit and consultit with his sifteris in all pair wicket resolutiones, to þe tyme that þe said poyfoneable drink was gevin be þame to the saidis tuo boyis; quha paireftir, be þe said Robert his counfall and advyse, tuik þe saidis herbis, and steipit þame amangis aill ane lang space; and paireftir, it being in deliberatioun betuix þe said Robert and his sifteris, quhidder it shuld be cassin out or vsed, in end, it was vniformelie aggreit and concludit amangis thame, that þe drink quhairin the saidis herbis war steipit shuld be gevin to the saidis tuo boyis: ffor accomplisshment quhair of, tuo of the saidis sifteris, accompaneit with Gilbert Campbell, his horse-boy for þe tyme, haifing also in companie with thame the said *Johnne Erskine*, the eldest of the saidis tuo boyis, past altogidder furth of Logy to þe burgh of Montrois, quhair þe vther boy with his mother remanit and duelt for þe tyme; and pair, of þe said Robert Erskine his knowlege, counsell, and devyse, the said poyfoneable drink was gevin to the saidis tuo boyis, his brother-sones: Quhilk drink, eftir pair ressaueing pairof, wrocht so violentlie vpone þame, that immediatlie paireftir thay tuik sic ane extraordinier preise² of vomeiting, that na persone expected for pair lyfe: Be occasioun of the quhilk poyfoneable drink, sa miniftrat and gevin to thame, the said *Johnne Erskine*, the eldest of the tuo, contracted sic a deidlie diseas and seiknes, that his skyn turning all blak, and his haill nobill pairtis inwardlie consumeing, he daylie and continuallie paireftir dwynet³ in grit dollour and pane, to the tyme of his death, viz. to the terme of Witsonday last; at quhilk tyme, he in maist lamentable maner deceiffit, of the said vennemous and poyfoneable drink, vttering befor his death thir or the lyk woirdis, to all sic as war present, “Wo is me, that I evir had richt of succeffoun to ony landis or leving! ffor gif I had bene borne sum pure coitteris sone, I had nocht bene sa demanet,⁴ nor sic wicket practizes had bene plottit aganis me for my Landis!” AND sa, was crewallie and tressonabillie Murthoret; and be þe foirsaid vnlawfull and poyfoneable drink, cuttit aff be þe said Robert Erskine, his uncle: And he was airt and pairt of the said treasonabill Murthour, and of þe damnable consulting and devyseing with the said Jonet Irwing, ane notorious Witche, ffor

¹ Lat. *habilis*.² Literally, *press*.³ Pined away.⁴ Treated.

making and miniftrating of þe faid poyfoneable and vennemous drink, for the faidis tuo bairnes Murthour and deftruction. LYKAS, the vther of the faidis tuo boyis remanis as zit fair viffeit with intollerable payne, and feiknes vniuerfall throw his haill body, be occaſioun of the faid drink gevin to him at þe time foirfaid; off quhais lyfe pair is na hoip. TO THE TAIKIN of the quhilkis pre-miffes, þe faid Robert being examinat be the Lordis of his Maieſteis Previe Counfall; quhairupoune, eftir lang deilling with him pairintill, in end, come to his Confeſſioun, in maner ſpecifeit in his Depoſitiones: Lyk as, he being charget, be vertew of Criminall Letteris, to haif compeirit and fund cautioun that he ſould vnderly the Law for þe faidis crymes, was, for his nocht finding cautioun, denuncet to the horne, and declairit fugitiue fra his Maieſteis Lawis, for the crymes aboue ſpecifeit; at the quhilk Hoirning he hes ever ſen ſyne remanit vnrelaxt pairfra. As þe faidis Letteris of Hoirning, producet aganis him, in the ſelf proportis.

Eftir reiding of the quhilk Dittay, and accuſatioun of the faid Robert Erſkine, be vertew thair of, of the crymes aboue expremit, quhilkis war Confeſſit be him to be of verritie, the Juſtice, of his awin conſent, referrit the ſamyn to the Tryell of ane Affyſe of the perſones following.

ASSISA.

Mr Ja ^s Durehame of Duntervie,	Sir George Ramſay of Dalhouffie,	Johnne Beatone of Falay,
Mr Francis Bothuell, brother ger-	Mr Alexander Seatoun of Gormok,	Patrick Maxwell of Newark,
mane to vinq ^{le} Johnne, Lord	Cuthbert Cunninghame,	Proveift Aulay Mc ^e caulay of Ardinapill,
Halyrudhous,	of Dumbarten,	Duncane Menzeis of Comerie,
Robert Falconer of Ballandro,	 Menzeis of Weyme,	Mathow Bailzie of Littillgill.
Sir Johnne Preſtoun of Vallafeild,	Patrik Auchterlonie,	 Dunlope of that Ilk.

Quhilkis crymes the faid Robert Erſkine of new, in the faid Affyſe preſens and audience, confeſſit and acknowlegit to be of verritie. Quhairupoun inſtrumentis was tane be our faid ſouerane lordis Aduocat; and quha, for the faid Affyſe forder reſolution, producet to thaine the faid Robert Erſkines Depoſitiones, ſubſcryuit with his hand, and dyuerſe of the Lordis of his Maieſteis Previe Counfall; togidder with the faidis Letteris of Hoirning, beiring him to haif bene fugitiue fra his Maieſteis lawis, continuallie ſen the committing of the faid fact.

VERDICT. The Affyſe, all in ane voce, be the mouth of Mr James Durhame of Duntarvie, chancellor, be reſſone of his former Depoſitiones, and ratificatioun thair of, maid in judgement, ffand, pronuncet, and declairit the faid Robert Erſkin to be Giltie, culpable, and convict of airt and pairt of the Murthour and diſtruction of the faid Johnne Erſkine, his brother-ſone, be miniftrating to him and his faid brother of the poyſoneable drink, in maner ſpecifeit in the faid Dittay.—SENTENCE. To be tane to the Mercat-croce of Edinburgh, and thair his heid to be ſtrukin from his body: And all his moveabill guidis to be eſcheit, &c.¹

¹ See the Trial of Helen, Iſſobel, and Annas Erſkine, Jun. 22, 1614.

Horse and Sheep Stealing.

Jan. 28, 1614.—PETER DAVIDSOUN in Heddene; James Wallace, sumtyme duelland in Dundie; and Donald Smyth in Dum-barten.

Dilaitit as follows, viz. The said *Peter Davidsoun* ffor the thiftious steilling, conceilling, reffetting, and away-taking of ane cut-luggit stanet naig, mouf-hewit and ftug-taillit;¹ togidder with ane foird baffoned meir,² haifing thre quhyte feit, alfo ftug-taillit, a faxtene myles beyond Beruik in Ingland; committit about Mydfomer laft. ITEM, for the thiftious steilling and away-taking of ane gray ambland meir, with ane littill foired meir, a fevin or aucht myles abone Annik,³ in Ingland; committit at Lambes laft, &c. AND the faidis *James Wallace* and *Donald Smyth*, ffor airt and pairt of the thiftious steilling, conceilling, reffetting, and away-taking of tua horfe, furth of the landis of Kerfe, &c. &c.

VERDICT. Fylet, culpable, and convict, conforme to thair awin Judiciall Confessiones.—SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair to be hangit quhill thai be deid; and all thair moveabill guidis to be efcheit, &c.

Theft of Title-deeds, &c.

May 20.—PATRIK EVIOT, sone to Finlay Eviot in Mwretoun, and sumtyme fervand to Patrik Eviote of Mwretoun.

Dilaitit, accufit, and perfewit be Sir Williame Oliphant, &c. and Johnne Mathow of Balhouffy, of the crymes following.

DITTAY againſt the Pannell.

FORSAMEKILL as Johnne Mathow of Balhouffie, in the moneth of Apryle, the 3eir of God Im. fex hundreth threttene 3eiris, haifing repairit towardis the Citie of St Androis, to haif procuret Confirmatioun of certane his landis, baldin be him of pe Proveift of pe Auld College pairof; and haifing tane his evidentis⁴ with him to that effect, lyke as, vpon the 26 day of the said moneth of Apryle, being the Senjie-flair-day⁵ of St Androis, the said Johnne Mathow, being within pe said burgh, in his cuming alangis the Hie freit pairof, accompaneit only with Alexander Blair, than his fervand, quha than had cayreing vnder his airme the said Johnne Mathow his wallet, quhairin thair was ane grit number of his evidentis and writtis, with tua pair of filk ſchankis,⁶ ane pair of worfet ſchankis, ane pair of fyne filk gairtanes, with ane certane quantitie of gray veluet, and vther ſmall neceſſaris pertening to him, all bund vp togidder within the said wallet; and at pair cuning foiranent Robert Ruſſell his ſtable, quhair pe said Johnne Mathowis horſe was ſtablet for pe tyme, the said Alexander Blair, his fervand, haifing than paſt in to the said ſtablebris houſe, to geve the faidis Johnne Mathowis horſe ſum corne; and in this meane tyme, haifing laid down pe said wallet, with the faidis evidentis and vtheris foirfaidis being pairin, vpon pe buird;⁷ it is of verritie, that pe said Patrik Eviote, fervand to the said Patrik Eviote of Myretoun, of the ſpeciall cauſeing, directioun, hounding out, and command, reſlett, aſſiſtance, and rathabitoun of his said maſter, being for the ſpace of tua or thre dayis ofbefoir, ever attending and following adreich⁸ vpon the said Johnne Mathow and his boy, in all pairtis of pe said Citie of St An-

¹ A crop-eared stoned horse, mouse-coloured and dock-tailed.

³ Alnwick.

⁴ Title-deeds.

⁵ Synod-fair.

⁶ Stockings.

⁷ Table.

⁸ Dodying,

and following at a little distance.

drois quhairvnto thay maid ony repair: And haifing perfauet the said Alexander Blair pafs fra his maisteris bak, and to enter within pe said Robert Ruffellis duelling-hous, and pair to haif laid down pe said wallet vpon the burd-heid pairof, in maner foirsaid; in maist thiftious maner, he convoyed him self within pe said Robert Ruffellis hous, as the said Alexander Blair was in geving corne to his maisteris horse, and thiftiouslie past vp, staw, conceillit, reffet, and away-tuik furth pairof, the said wallet, with the evidentis, silk schankis, worfet schankis, silk gairtenis, gray veluet, and vperis his necesfaris pertening to him, being all bund vp togidder pairintill, had and tranpourtit the samyn away with him to sic pairtis and places as he pleisit, nevir making ony restitution nor redelyuerance pairof to the said Johnne Mathow, just awner of the samyn, to his grit hurt and perrell of pe securitie of his landis, be abstracting and withholding of pe saidis evidentis pairof. AND siefyk, ffor the thiftious steilling and away-taking of ane pair of blankettis, pertening to the Lady Balhouffie; and of ane pair of fyne marillit¹ plaidis, pertening to Roife of Cragie. And for cownone Thift, and Refsett of thift, &c.

VERDICT. Fylet, culpable, and convict of the haill thiftious crymes aboue specifseit.

THE JUSTICE Continewis the pronunceatioun of Dome to the morne: And Ordanit the pannell to be committit to waird, in the meane tyme.

May 21.—SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair to be hangit vpon ane gibbet, quhill he be deid: And all his moveabill guidis to be efcheit, &c.

Taking Captive — Slaughter.

Jun. 1.—WILLIAME M^cINTOSCHE of Essie; Martene M^cewin V^cewir; and Lauchlane M^cconeill V^clauchlane in Bancher, (and others).

Dilaitit for the taking of Colene Campbell of Clwnes captiue and priffoner; And for the slauchter of vmq^{le} Donald M^cintailzeour, and vtheris crymes.

Colene Campbell of Clwnes producet the Letteris, be the quhilkis thay ar denuncet rebellis, and put to the horne, for nocht finding caution to haif compeirit, &c. And producet lykwayis ane Warrant, subfcriuit be my Lord Chancellor, Secreter, and Thesaurer, for deserting the saidis Letteris aganis *Duncane M^cintoshche of Aberairdour*, Williame M^clauchlane V^cwilliame M^cintoshche, Angus Rofs, fervand to Williame M^cintoshche in Boirlum, and Williame Bayne M^cconeill V^callaster Vayne, in Delnavert.

Consulting with Witches — Poisoning — Treasonable Murder.

[THE Editor begs to refer the reader to a short introductory Notice prefixed to the Trial of ROBERT ERSKINE,² the brother of the pannells, whose crimes form the subject of the following Trial. It only seems necessary in addition to state, that he has been so fortunate as to obtain the following authentic memorials³ of the proceedings against these unhappy victims of ungoverned passions, and of base and unbridled avarice. Their fate is written in letters so legible, that he who runs may read.

(Dec. 16, 1613.)—"THE tua sifteris of the deceassed ROBERT ERSKYNE, who iustlye suffered

¹ Variegated; mottled; marbled; or chequered.
Adv. Library, "Minutes of Privy Council Proceedings." See also *Balfour's Annales*, II., 53.

² See Dec. 1, 1613.

³ From *Denmylne MSS.*

deathe, for the practyse of Witchcraft and Poyson vfed be him against his twa nephewes, the breetherine of THE HOUSE OF DYNNE, are brought to this Toun; and being examined, are obdured in a constant denyall of all that mater, nochtwithstanding that there late brother past constantlye to deathe, with avowing that detestable cryme vpone thame, as being the first devyfares therof, the motionaris therof to him, and the executoures therof in there own perfonas. Thay are to be confronted with on who assisted thame in confell and executioun of that deede; and thairefter, in caise of there perfeverance in there denyall, thay are to be pute to the Torture."¹—(Jun. 22, 1614.) "THE xxij day of Junij nixt is appoyntit for the Tryell of HELENE and ISSOBELL ERSKENIS, for the Poyfoning of the twa brether of the Hous of Dynne; and direction is gevin to the Justice and his Maiesteis Aduocat to proceed in the perfute, tryall, and punischment of that mater accordinglie."—(Jun. 23.) "THE thrie sifteris of the Houffe of Dinne wes this day pannelled, accoofted, and convicted of the Poyfoning of there two coofinges, the brether of Dinne; and Sentence is geven aganes thame to lose there heades; whilk wilbe execute vpon the xxiiij of this instant."]

JUN. 22.—HELENE ERSKINE, Iffobell Erskine, and Annas Erskyne, Sifteris to vmq^{le} Robert Erskyne, brother to the Laird of Dwn, and dochteris lauchfull to vmq^{le} Johnne Erskine, appeirand of Dwn, callit Johnne of Logie.

Dilaitit of airt and pairt of the Poyfoneing of vmq^{le} Johnne Erskine, thair brother-son,² be miniftrating to him and to Alexander Erskine, his brother, of ane poyfoneable drink; of the quhilk the said vmq^{le} Johnne Erskine depairtit this lyfe; committit about Witfonday, in anno 1610 yeiris.³

PERSEWAR, Sir Williame Oliphant of Newtown, kny^t, Aduocat to our fouerane lord.

PRELOCUTOURIS in defence, Mr Thomas Wilfone, and Mr Laurence M^cgill, (Advocates,) Mr Johnne Erskine, Minister,⁴ Mr Williame Keith, Patrik Bruce.

Mr Thomas Wilfoun and Laurence M^cgill, Aduocatis, produces ane WARRANT of the Lordis of Secreit Counfall, be the quhilk thai war charget to compeir for the thre sifteris on pannell, in thair defence; and in respect of the schortenes of tyme quhairupoun thay ar charget, and of the wechtines of the caus quhairupoun the pannell is dilaitit, desyres my lord Justice to grant ane continuatioun to fry-day nixt, that in the meyne tyme thay may haif lasure to advyse with the pairtie in the caus.—The Aduocat answers, that na continuatioun can be grantit, in respect the perfonas on pannell was charget vpone fyftene dayis wairning; and ane autentik coppie of thair Dittay was delyuerit to thame, at the geving of the said charge.

THE JUSTICE Ordanis proces; and the Summondis to be red.

It is allegit be the pannell and thair prelocutouris, that the Dittay is nawayis relevant, in thre feuerall poyntis, viz. *ffirſt*, in the allegit consulting with Jonet Irwing, Witche, nocht condiscending vpone the woirdis of consultatioun, or quhat

¹ The Editor has found no satisfactory evidence to establish that the Torture was actually put in force, in this Case.

² Their Nephew, who was the heir-apparent of David Erskine, their eldest brother.

³ The 'Dittay' is a mere echo of their brother Robert's, and is therefore unnecessary to be inserted here. See Dec. 1, 1613.

⁴ At St Ceres Kirk.

responſe was gevin to the pannell be the Witche. *Secundo*, anent the allegit reſſauing of the vennemous or poyſoneable herbis, for the vſe contenit in the Dittay, *non relevat*, except the perſewar war ſpeciall vpon the names of the herbis, and qualitie thair of. *Tertio*, as to the allegit iniunctiones gevin for vſeing of the ſaidis herbis, *non relevat*, except the perticuler woirdis of iniunction war ſpeciallie ſet down in the Dittay.—To the quhilk it is anſuerit, that the allegiance aucht to be repellit, in reſpect of the lybell, quhilk he vſes *coniunctim* in the haill pointis, as is qualifeit, viz. that the pannell paſt and conſultit with ane Witche, fra quhome thay reſſauit the poyſoneable herbis, with iniunctiones how to vſe the ſamyn, for the away-taking and diſtruction of thair brother-ſones,¹ in maner ſpecifeit in the Dittay; in reſpect quhair of, the Dittay ſould pas to the knowlege of ane Aſſyſe.

THE JUSTICE findis the Dittay relevant, *coniunctim*; and nochtwithſtanding of the allegiance, Remittis the ſamyn to ane Aſſyſe. Quhairvpon the Aduocat aſkit instrumentis.

ASSISA.

James Douglas of Todboillis,	Adame Cunninghame of Chapell,	Mr Robert Stratoun, in Strathe,
Mr Joſeph Hadden,	Williame Somervell of Pole,	Mr Robert Purves, in Ballache,
Thomas Craingelt of that Ilk,	Johnne Norie, in Brechin,	Johnne Moncur, in Blacok-mure,
Thomas Inglis of Eiſtcheill,	Mr Thomas Ramſay, thair,	Johnne Barclay, in Balmakellie,
James Somervell of Spittell,	Robert Barclay, at Marie Kirk,	Johnne Barclay of Johnnitoun.

The Aduocat, for verifiſcatioun of the Dittay, produces ane Letter writtin be Mr Airthour Erſkine, the pannellis father-brother,² thair Confeſſioun of the cryme lybellit, and thair penitence for the ſame; with a deſyre of his lordſchapis ſupplie and help, to tranſpourt thame furth of the cuntrie.

The ſaid Letter being preſentit to Johnne Erſkin, Miniſter, now Tutour of Dwn, and being inquyret gif the ſamyn was the ſaid Mr Airthouris hand-writ or nocht, Declairit that the ſamyn was everie woird the hand-writ of the ſaid Mr Airthour. Quhairupoun the Aduocat aſkit instrumentis.

Thaireftir my lord Aduocat producet the Depoſitiones maid be vmq^{le} Robert Erſkine, thair brother, quha paſt to the deid at the Mercat-croce of Ed^r, that the pannell war the only firſt proponeris of that wicket fact to him; and that the ſamyn was committit and done be the perſones on pannell, in maner ſpecifeit in the Dittay.—Repeittis the affirmatioun maid judiciallie be *David Blewhous* of his former Depoſitiones; quhilk my lord Aduocat cauſet reid ouer to Blewhous. Producet lykwayis the Depoſitiones maid be *Gilbert Campbell*, and *Johnne Kirk*, in the ſaid matter; and deſyret the Aſſyſe to cognosce thairupoun; And proteſtit for Wilfull Errour, in caice thai acquit the pannell of the ſaidis crymes.

VERDICT. The Aſſyſe, be pluralitie of voittis, ffand, pronuncet, and declairit

¹ Nephews.² Paternal uncle.³ Death.

the saidis Iffobell, Helene, and Annas Erskynis to be ffylet, culpable, and convict of the haill crymes specifeit in the said Dittay; and that be the repoint and Declaratioun of the said Thomas Craingingelt of that Ilk, chancellor.

SENTENCE. To be tane to the Mercat-croce of Ed^r, and thair thair heidis to be strukin frome thair bodeyis: And all thair moveabill guidis to be efcheit, &c.

DOME OF BANISCHEMENT *vpone Helene Erskine.*

(Mar. 22, 1615.)—Helene Erskine, ane of the thre lauchfull dochteris of vinq^{le} Johnne Erskine, appeirand of Dwne, callit *Johnne of Logie*, being brocht furth of waird, out of the Tolbuith of Ed^r, quhairin scho had remanit sen her last convictioun, and presentit vpone pannell, to heir DOME of new agane pronuncet aganis hir, as scho that was convict and the dome of daith pronuncet aganis hir, &c. Ane ACT of *Secreit Counsell* was presentit, and delyuerit to the Justice; quhair of the tennour followis.

APUD ED^r, *decimo sexto die mensis Marcij, anno Domini millesimo sexcentesimo decimo quinto.* FORSAMEKILL AS, by the executioun to the daith of *Robert Erskine* and his tuo systeris, the im-
poyfoning of the tuo bretherene of Dwne is sufficientlie pwneischet: And whearas, thair remaneth 3 it, in fure custodie, for the same offence, HELENE ERSKINE, who being moir penitent, thogh les giltie, than the rest, doith mereit the moir commiseratioun: HIS MAIESTIE is thairfor gracioullie pleasit to spair hir lyfe, 3it so as scho fall nocht eschaip the pwneischment of hir pairt of the said offence; bot pat scho be BANISHED out of this kingdome, during hir lyfytyme. THAIRFOR, the Lordis of Secreit Counfall, according to the Kingis Maiesteis will, plesour, and directioun, fend vnto thame in this matter, Ordanis and commandis his Maiesteis Justice, Justice clerk, and pair deputis, to appoint and set ane new Justice Court, to be haldin be thame in the Tolbuthe of Ed^r, at such tyme as thay pleis (to) affix; and pair to call the said *Helene* befor thame, and to pronounce new sentence and dome aganis hir; ordaning hir to be BANISHED this kingdome, and nevir to returne agane within the same during hir lyfytyme, without his Maiesteis Licence had and obtenit to pat effect; and to depairt furth of this realme, within the space of fourtie dayis estir pe pronunceing of the said new dome, vnder the pane of deid: With certificatioun to hir, and¹ scho failzie, and depairt nocht furth of this realme, within the terme foirsaid preseryuit vnto hir; and being depairtit furth of pis realme, yf scho returne agane within the same, without his Maiesteis Licence had and obtenit to that effect, that the pane of deid falbe execute agaisnt hir, without fauour or mercie.

EXTRACTUM de Libris Actorum Secreti Consilij f. d. n. regis, per me, Jacobum Prymrois, clericum ejusdem, sub meis signo et subscriptione manualibus. JACOBUS PRYMROIS.

THE JUSTICE, for obedience of the will and ordinance thairin contenit, be the mouth of Johnne Dow, dempster of Court, Ordanit, nochtwithstanding of the former dome of daith first pronuncet, the said Helene Erskine to be BANISCHET, &c.²

Child-Murder.

Jun. 25.—JONET BROWN, dochter to Johnne Brown in Bigger.

Dilaitit, fforamekill as Johnne Stewinfone in Bigger, haifing this last yeir

¹ An; if; in case.

² The terms of the Warrant are repeated, *verbatim*, in the Record.

gottin ane bairne with hir, in the filthie cryme of ffornicatioun, fcho, for avoid-
ing the fclander and pwneifchment, conceillit the faid bairne, fua that nane of
the parochin knew hir to haif bene thairwith ; and about the moneth of Marche,
or thairby, laft, being cum to the tyme of hir delyuerie, fcho paft furth of hir
fatheris duelling-hous to the feildis, neir to the faid toun of Bigger ; and without
feiking of ane meidwyfe, or vther ordiner help, fcho travellit, and was delyuerit of
ane quik madin-bairne ; quhill chylde fcho strangillit immediatlie, and tuik the
fame to ane dyk-fyde outwith the faid toun of Bigger, and coverit the famyn
with ane number of turves : And fa, be neglecting the ordiner meanis in hir
birth, fcho crewallie murtherit and flew the faid bairne.

The pannell denyis the Murthour of the bairne ; and fays that the bairne
deit fchortlie efter the beiring, being ane lafs-bairne ; and being deid, fcho eirdit¹
the famyn in the grund of ane truff ftak,² in maner fpecifeit in the Dittay.

VERDICT. The Affyfe, be the mouth of Williame Flemyng of Perfilandis,
chancellor, ffland, pronuncet, and declairit the faid Jonet to be ffylet, culpable,
and convict of the Murthour and diftruction of hir faid infant bairne, conforme
to hir Dittay.—SENTENCE. To be tane to the Caftell-hill of Ed^r, and thair to
be hangit quhill fcho be deid : And hir moveable guidis to be effcheit, &c.

Theft.

Jun. 25.—ANDRO GULE, borne in Clermond, vnder the Laird of Dairfie.

Dilaitit and accufet for the fteilling and away-taking of tua pair of fcheittis,
ane pair of blankettis, ane littill panne, and ane fuord, pertening to Williame
Perfone, in the Hill of Bathe.—Grantit the famyn to be of verritie, and cravet
God mercie thairfor ; and offerit him felf in our fouerane lordis will, and his
hienes Juftice will, for the faidis crymes : Quhome the Juftice reffaut.

SENTENCE. To be SCURGET throw the burgh of Ed^r, and to be BANISCHET
furth thairfor for euir : And gif euer he war apprehendit for Thift heireftir, fould
be hangit to the deid, but fauour.

Cattle-stealing—Slaughter.

Jul. 15.—GILBERT JOHNNESTOUN, brother to Gawin Johnneftoun in
Annand-holme.

Dilaitit, accufet, and perfewit, be Hew Douglais of Dalwein, as fone, Sir
Robert Dowglais of Carfchogill, as neir kinfman, of vmq^{le} Hew Dowglais of Dal-
wein, ffor airt and pairt of the thifteous Steilling, conceilling, and away-taking,
vnder filence and clud of nycht, furth of the landis and Maines of Dalwein, of
threttie fax heid of ky and oxin, pertening to the faid vmq^{le} Hew and his ten-

¹ Earthed ; buried.

² Peat or turf stack.

nentis ; committit be him, and vtheris his complices, cowmone and notorious thevis, rebellis, and fugitives, vpone the xxviiij day of August, I^m.V^c. fourfcoir fevintene yeiris : AND siclyk, ffor airt and pairt of the crewall Murthour and slauchter of the faid vinq^{le} Hew Douglas of Dalvene, in the following and redding of the faid guidis, at the tyme foirfaid ; vpoun fet purpois, prowifoun, and foirthocht felonie.

ASSISA.

Johnne Lyndfay of Auchinkeoch,
Robert Johnneftoun of Vamphra,
James Greir of Pitfillan,
Capitane James Hunter, burges of Ed^r,

Mr Samuel Kirkpatrik of Auchinlek,
Williame Johnneftoun of Lokerbie,
James McMath of Schaw,
Johnne Bell, burges of Edinburghe.¹

VERDICT. Fylit, culpable, and convict.—Sentence continewit quhill the Justice war advyset with the Lordis of his Maiesteis Previe Counfall thairanent.

Jul. 16.—SENTENCE. The Justice, ffor obedience of ane WARRANT, direct to him be the Lordis of Secreit Counfall, subfcriuit be my Lord President, my Lord of Roxburgh, my Lord of Bynning, Secretar, my Lord of Blantyre, and be my Lord of Kildrumnye, be the mouth of Johnne Dow, dempfter, decernit and ordanit the faid Gilbert to be tane to the Castell-hill of Ed^r, and thair to be hangit vpoun ane gibbet, quhill he be deid ; and all his moveabill guidis to be efcheit, &c.

Slaughter.

Dec. 9.—SIR PATRIK HEPBURNE of Vachtoune, kny^t ; James Ker, Patrik Dikfoun, David Allan (Ellem), Patrik Mortoun Stewart, Andro Gyller cuik, George Quhyt horskeipar, Diones Smart huntifman, Williame Carfrae fcheiphird, Williame Drummond, all feruitouris to the faid Sir Patrik.

Dilaitit for airt and pairt of the slauchter of vinq^{le} Robert Broun, feruitour to Mr Richart Dowglais of Brokhollis.

Patrik Dowglais, baxter, burges of Ed^r, producit the Letteris, dewlie execute and indorfat, purchest be Johnne and George Brounes, as brether, and the faid Mr Richart, as maister and neir kynfman of the faid vinq^{le} Robert, and our fowerane lordis Aduocat, and protestit for releif of his cautionerie ; the quhilk the Justice admittit.—Mr John Hepburne of Gilmertoun, as cautioner for the faidis Sir Patrik, for his releif of the faid cautionerie, producet the Counfallis Warrant, ordaning this dyet to be desert, &c.

JUSTICE, Justice clerk, and 3our deputtis : fforfamekill as the nynt day of December instant is appointit to Sir Patrik Hepburne of Vachtoun, kny^t, James Ker, Patrik Dickfone, David Ellem, and vtheris, his feruitouris, for thair compeirance befor 3ow in the Tolbuith of Ed^r, to vnderly our lawis for the slauchter of vinq^{le} Ro^t Broun, feruitour to Mr Richart Dowglais : And feing pe pairteis ar now

¹ The rest were burgesses of Edinburgh.

agreit, and hes chopin¹ handis, in presence of diueris of our Nobiletie and of his Maiesteis Counfall : Theis ar thairfoir, in his Maiesteis name, to command 3ow to desert the said dyet, and forbeir all forder proceeding pairintill : Quhairanent þir presentis falbe 3our Warrant. At Ed^a, the fewint day of December, 1^m.Vj^r. and fourtein 3eiris.

AL. CANCELL^r. AL. MAR. R. CAITHNES. LYNLY^gGOW. KINGORNE. LOTHEANE.

High Treason—Resisting the King's Lieutenant and his Forces —Rebellion in Orkney, &c.

[THE proceedings which were adopted against PATRICK EARL OF ORKNEY, in the years 1610 and 1611, have already been noticed in a former part of this Collection ;² and as THE REBELLION IN ORKNEY, as a matter of history, has been recorded in almost every History of Scotland, it is unnecessary here to enter into any minute detail or recapitulation. Owing to the relationship which existed between the Earl of Orkney and the King, and the high favour in which that Nobleman had long stood with his Majesty, every device appears to have been resorted to, on the part of the Privy Council and the Lord Advocate, for the purpose of enabling the Earl to prove his innocence of the former accusations of cruel Oppression and Tyranny, which had been brought against him by the wretched inhabitants of Orkney and Shetland, after they had submitted, as long as was consistent with human nature, to endure such barbarous treatment. The Earl was accordingly confined in Edinburgh Castle ; and in the meantime, the Privy Council deputed the Bishop of Orkney to enquire into the truth of these serious charges, and to report to them within a reasonable time.

Owing to his attempts to escape from ward in Edinburgh Castle, the Earl of Orkney was conveyed, as a state prisoner, to the Castle of Dumbarton ; where it was considered he would be in more sure custody, and would, besides, be farther removed from the intrigues in which it had long been conjectured he was busily engaged. Notwithstanding of the vigilance of his keepers, he contrived to instruct his ‘ bafe son,’ ROBERT STEWART, one of the subjects of the following Trial, to proceed to Orkney, under the pretence of uplifting the rents which were due by his tenants, but, in reality, his design was to seize upon the Castle of Kirkwall and other strengths in Orkney, which had been confided to the custody of the Bishop, the Sheriff, &c., to raise the standard of Rebellion, and, finally, to throw off his allegiance to the Crown of Scotland. The Earl had anticipated that, by means of the money to be thus raised, he would easily overcome the fidelity of his keepers, or otherwise provide the means of his own escape. Having ordered ammunition and other supplies to be procured from Norway, he calculated, that in those remote regions, which were rendered almost inaccessible during many months in the year, at that period, when the art of navigation was at so low an ebb, he might assume the despotic rule of these Islands, as an independent Prince.

The successful termination of the Earl of Caithness's Commission of Lieutenancy, the capture of the Castle of Kirkwall, and all his remaining strongholds, the capitulation and unconditional surrender of Robert Stewart and the other rebels, together with the subsequent execution of the ringleaders in this Rebellion, for ever dispelled the absurd reveries and the wicked plots of this guilty man, who was doomed, in February 1615, to forfeit his life upon the scaffold. Reference is here generally made to his two Trials, for the sake of brevity.

It only remains to state, that *Calderwood*, in his MS. Church History,³ preserves the following notice of the Execution of these unhappy and deluded criminals.—(Jan. 6, 1615.) ‘ ROBERT STEWART, fone naturall to the Erle of Orkney, with other five of his complices, convicted of treasonable taking, keeping, and defending of the Cattle of Kirkwall and the strengths in Orkney, were hanged at the market croffe of Edinburgh, and died penitent. The said Robert confessed his father, the Earle, who

¹ Struck ; shaken hands.

² Vol. III., p. 81, &c.

³ *Calderwood's Church Hist.*, MS. Adv. Library.

then was wardit in the Castle of Edinburgh, commandit him to doe that which he did ; but granted he gave him a contrare-mand, before he entered in executione. The Gentleman, not exceeding 22 years of age, was pitied of the people, for his tall stature and comely countenance.'

As the details of this Rebellion are entirely unknown to the public, the Editor has the pleasure of laying before his readers a mass of Original State Papers, Dispatches, Examinations, Confessions, and other interesting Documents, which he has appended to this Trial, and to that of the Earl of Orkney, Feb. 1, 1615. As usual, the sources from which these Illustrations have been procured are noted ; and it is hoped, that the whole will be considered as an acceptable addition to the history of that period.]

Jan. 5, 1615.—ROBERT STEWART, bafe sone to Patrik, lait Erle of Orkney ;¹ Thomas Blak, alias Dowglas, funtyme Chalmerlane and Bailzie to the said Erle ; Archibald Murray, wricht in Birsay ; Andro Mairtene, funtyme fervand and secretar to the said lait Erle ; Alexander Layng, also his fervand ; and Thomas Layng, indueller in Kirkwall.

Dilaitit of the Treffonable taking and surprising of his Maiesteis CASTELL OF KIRKWALL, KIRK, and STEIPLE OF KIRKWALL ; treffonable resisting of THE ERLE OF CAITHNES, his Maiesteis Lieutenant ; and vtheris treffonabill crymes, contenit in thair Dittayis following.

DITTAY *against Robert Stewart and others.*

FORSAMEKILL AS, albeit it was mair nor nottour and manifest to 3ow, that our fouerane lord the Kingis Maiestie, and Lordis of his hienes Previe Counfall of his Kingdome, had depute and authorizet *Sir James Stewart of Killeith*, kny^t, to be Chalmerlane of the Erledome of Orknay and Lordschip of 3eitland ; quha, be resson of pe said office, nocht only became in posseffioun, in vplifting to his Maiesteis vse of pe haill rentis, casualities, and deuties of the said Erledome, lordschip, and leving pairof, bot lykwayis, be him self, his fervandis, and substitutis, obtenit the charge, custodie, and keiping of pe haill Palices, Houffis, Castellis, and firenthis within the samyn ; speciallie, pe Castell of Kirkwall, the Hous and Palice of Birsay, and remanent houffis funtyme pertening to pe said *Patrik, lait Erle of Orknay*. As also, 3e, pe said *Robert Stewart*, being bundin, vpone 3our grit aithe, nocht to haif repairit to pe boundis of pe said cuntrie of Orknay and 3eitland, without his Maiesteis Licence, grantit to 3ow for that effect ; nochtwithstanding quhairof, it is of verritie, that 3e, the said Robert Stewart, being oft tymes thraitnet and minasset be the said lait Erle 3our father, vpone a miscontentment confauet be him aganis 3ow, ffor 3our supposet overgeving of pe said Castell of Kirkwall and vtheris Houffis tane and keipit be 3ow, maist treffonabillie schauking af 3our allegiance and obedience to our fouerane lord, and preferring the unhappie plott and counfall of 3our said ffather to the dew reuerence and regaird of his Maiesteis autoritie and lawis, and thairwith making schip-

¹ See Trials of Patrick, Earl of Orkney, Aug. 2, 1610 ; and Feb. 1, 1615.

wrak of 3our faith, honour, and credeit, quhairin 3e stuid bund vpon 3our grit and solemne aith, as said is : Off the speciall causeing, sending, hounding out, command, counsell, devyse, and directioun of the said lait Patrik, lait Erle of Orknay, 3our ffather, in the moneth of Maij lastbypast, or pairby, expresse aganis 3our former faith and former promeis, adressit 3our selff furth of thir pairtis to the said cuntrie of Orknay ; quhair 3e, togidder with *Patrik Halcro*, quha also was imployit and directit be 3our said ffather to assist 3ow in 3our intendit Rebellioun, convenit to 3our selffis the saidis *Archibald Murray*, *Thomas Blak*, *Andro Mairtene*, *Alexander Leggat*, and *Thomas Layng*, with dyuerse vtheris mwrtinuous and evill disposet persones, 3our associatis, plotteris, and practizeris with 3ow, in 3our hail rebellious and tressonabill courses following : AND *ffirst*, be 3our craftie and subteill meanis, convoyit and possest 3our selff and 3our associattis within pe Palice of Birsay, and violentlie expellit furth pairof Barnard Stewart, Keiper of the samyn ; drew in to 3our selff, within the said hous, to the number of threttie persones, bodin with hagbutis, muscatis, poulder, leid, and vther maner of weirlyk preparatioun : Lykas, the taking of the said Hous and manning pairof, in maner soirsaid, be 3ow and 3our rebellious associattis being maid knawin to *Mr Johnne Fynlayfone*, Schereff depute ; and he, in regaird of his office, and for preventing of 3our intendit Rebellioun, haifing assemblit ane grit number of the best affectionat gentilmen and cowmonis of pe cuntrie, in the said moneth of Maij, or pairby, lastbypast, cuming fordwardis to the said Hous of Birsay, tane and keipit be 3ow and 3our rebellious associattis, as said is ; and haifing, at his cuning pairto, be found of trumpet, in our souerane lordis name and authoritie, caufit charge 3ow to cum furth of his Maiesteis Hous, and to rander pe samyn to him, as Judge and Magistrat of pe cuntrie, vnder his Maieftie, without forder trouble to follow pairupoun, under pe pane of Tressone ; 3e, with 3our associattis, nocht only maist tressonabillie and contemptuoullie disobeyit pe said charge (and) refuisset altogidder to rander the said Hous, but schote furth pairof dyuerse schotis of hagbutis and muscatis at pe said Schereff and his companie, than eld¹ with our souerane lordis authoritie, in pe executioun of his office, and geving of pe former charge : At quhilk tyme, the said Schereff and his cunpany being vnwilling to encounter with 3ow, be way of deid, than left 3ow with 3our rebellious company, within the said Hous, and returnet to Kirkwall, of intentione to haif stayit 3our Rebellioun fra haifing ony forder course. Bot 3e, altogidder myndet to pas fordwardis pairintill, eftir pe Schereffis depairting fra the said Hous, convocat 3our rebellious company togidder, and be the space of ane moneth togidder, keiping 3our daylie consultatiounes and meitingis with vther,² 3e pair plottit, devyset, and concludit the tressonabill intaking and man-

¹ Clothed.² One another ; each other.

ning of the Kirk and Steiple of Kirkwall, the Castell pairof, and Place of the 3airdis, the slauchter and ruiting out of þe Schereff, þe Commiffar, and sic as wald tak pairt with thame aganis 3ow; and for this effect, convocat to 3ow þe hail parochineris and cuntrie people about, pat 3our selff with thame in airmes, and at tua feuerall tymes maid 3our mufteris and wappone-fchawingis, and mufterit togidder the number of nynescoir perfones, furneift and airmet, for þe maift pairt, with corflettis, hagbuttis, poulder, leid, lances, and vther weirlyk preparatioune: Quhilkis perfones, fa convocat be 3ow, 3e brocht altogidder within the faid Hous of Birlay and vperis houffis pairabout, quhair thay war feiftit and bankettit be 3ow: 3our Captanes and Commanderis war than chofin, and mony promiseffes and vowis maid, that na bak-ftarting fould be, fra 3our intendit Rebellioun, be ony of 3ow, at ony tyme thaireftir, bot to tak eafald¹ pairt with vther to² þe tyme þe lait ERLE OF ORKNAY war repoffeffit to his ancient and former government in that cuntrie. At quhilk tyme, ffor 3our gritter affurance of þe faidis vowis and promiseffis, ane BAND was plottit, maid, and devyfet be 3ow and 3our rebellious affociattis, all writtin be þe faid Andro Martenis hand; quhilk being presentit and producet to 3our haill rebellious company be 3ow, the faid Band (eftir grit aithes maid vpoun 3our fuoirdis³) was fufcryvit be fa mony of 3ow and 3our company as could wryte; and fa mony as could nocht wryte put to pair markis, and gaif pair folemne aithes to abyde pairat to pair lyves end; quhair-in thay war bund to die and leue with 3ow, and to tak eafald pairt with 3ow, in all 3our treffonabill courfes, aganis all perfones quhatfumeuir, his Maieftie, our gracious fouerane, nocht being exceptit, nor his royall authoritie fet apairt; committing thairthrow oppin and manifefte Treffone. LYK AS 3e, ffor bringing to pas of 3our former Rebellioun and devillifch conclufioun, about ane moneth or pairby paireftir, vnderftanding that þe Schereff and Commiffar war in securitie within the Toun of Kirkwall, nocht expecting ony fuddane perfute, refolveing with 3our selffis to haif þe Schereff in 3our power, either deid or quik, 3e, the faid Robert Stewart, accompaneit with the faid Archibald Murray, Thomas Blak, Andro Mairtene, Alexander Leggat, Thomas Layng, and vperis, 3our rebellious affociattis, to the number of threttie perfones, all bodin with hagbutis, mufcatis, poulder, leid, and all vther weirlyk prouifioun, vpone the xvij day of Julij laft-bypaft, come frome the faid Place of Birlay towardis þe faid Toun of Kirkwall, of intentione to haif affail3eit þe faid Schereff within his ludgeing, and haifing rankit 3our companie at þe Bowa-croce, 3e pair refflaut adverteifment of þe Schereffis being within the Castell; and pairthrow, finding 3our selffis difapointit of 3our expectatioun, 3e pair difcharget 3our volie of mufcattis, and enterit within

¹ Literally, *one-fold*; steadfast; true, &c. ² Until. ³ An ordinary form of military oath, on such occasions; which was borrowed from times of the remotest antiquity.

the Toun, quhair 3e abaid all that nycht, quhill¹ the morne paireftir ; att quhilk tyme 3e, with Patrik Traill, Williame Paterfone, and vtheris 3our affociattis, come to the duelling hous of Bernard Stewart, within the Toun of Kirkwall, about the brek of day, in the moirning, pryfet vp his bak 3et,² enterit within his clofe, dang at his hall dur with ane garroun ;³ and nocht getting entrie, went about þe faid hous to the hall window, quhair efter vp-dinging of þe faid window, the faid Archibald Murray, in gripping of Bernardis hagbute, was hurt be him with ane rapper⁴ in the hand. Eftir the quhilk tyme, 3e, haifing reteirit 3our felffis bak agane to Birsay, and finding with 3our felffis that 3our rebellious courfes had tane bot littil or na effect ; 3e, to haif the samyn brocht to ane finall poynt, convenit 3our haill forces togidder, and eftir deliberatioun tane be 3ow, the faid Patrik Halero, with þe faidis Thomas Blak, Archibald Murray, togidder with tuentie perfones of 3our rebellious number, of þe speciall directioun of 3ow, þe faid Robert, past all, bodin in feir of weir, with muscattis, hagbuttis, poulder, leid, and vther weirlyk furnitour, to the faid Toun of Kirkwall, and pair, vnder nycht, surpryfet and tuik in þe Kirk and Steiple pairof, quhilk 3e furneift with men, munitioun, poulder, bullet, and vper neccesser prouifioun for halding and keiping of the faid Steiple : And vpone þe morne paireftir, 3e, þe faid Robert, vnderftanding of þe guid fucces had be Halero and his companie, in þe wyning and taking in of þe faid Kirk and Steiple, 3e, accompaneit with the faid Thomas Layng, Andro Mairtene, Alex^r Leggat, and vperis 3our rebellious affociattis, to the number of threfcoir fouldiouris and men of weir, come fordwardis to þe faid Toun of Kirkwall, in oppin and arrayit battell, with founding of trumpettis, ftreking of drumis, schuiting of muscatis, in figne of triumph and victorie, and all vper weirlyk advancement ; the faid Patrik Halero and his affociattis of 3our rebellious troupe being than within the Steiple, schuteing out pairof at all perfones that durft kithe in 3our contrair,⁵ and founding vp pair horne to 3ow, for 3our forder incurragement to proceid in 3our treffonabill attemptis. AND being enterit within the faid Toun, maift treffonabillie affaget the faid Castell, and compellit þe Keiperis pairof to rander the samyn, thay being bot of a few number, and nocht able to withftand 3our violent affault ; quhilk being tane in be 3ow, 3e immediatlie paireftir cuttit the brig⁶ pairof for 3our gritter furetie : At quhilk tyme, 3e lykwayis treffonabillie tuik, be force, þe Houfe and Place of þe 3airdis, with the Victuall-hous, and feafit vpone þe haill furnitour of meill, malt, and vther prouifioun for keiping pairof : At quhilk tyme, 3e treffonabillie pat handis in the perfone of þe faid Mr Johnne Fynlafoun, Scheref, being than within þe faid Castell ; as also, come to the duelling hous of the faid Barnard Stewart,

¹ Until.² Forced up his back-gate by means of a lever.³ Beat at his hall or front

door with a beam, used as a battering ram, to shatter the door to pieces, or to start it from its hinges.

⁴ Rapier, orsmall sword.⁵ Come forward to take part against you.⁶ Drawbridge.

vnder silence and clud of nycht, brak vp his durris, and tuik him violentlie and aganis his will furth of his bed, led him captiue and prissoner to þe said Castell of Kirkwall, quhair he and the said Schereff war keipit in strait firmance and captiuitie be the space of fyve dayis togidder; and paireftir war cayreit and tranfpoiritit, as captiues and prissoneris, to certane crawis or schipis, to be brocht south to sic places as ȝe had appointit; thay being his Maiesteis loyall and faithfull subiectis, doing quhat in þame lay to haif stayit the cours of ȝour former Rebellioun. THE VERRITIE and trew repoir of the quhilkis ȝour tressonabill and detestabill villaneis cuming to the eiris of HIS MAIESTIE and Lordis of his hienes PREVIE COUNSALL of this kingdome, and thay, for the mair spedic staying and repreffing of the saidis enormities, haifing burdenit and imployit GEORGE ERLE OF CAITHNES, as Leutenment and Commiissioner for his Maiestie to pas over with forces to the said cuntrie of Orkney; and for that effect, ane grit number of fouldiouris and men of weir being wadget and listit, vpoun his Maiesteis charges; as also, certane peces of ordinance, poulder, bullet, and vper furnitour for battering of þe saidis strentthis and holdis surpryset and keipit be ȝow; togidder with tua schipis and ane pynnadge, being also frauchtit, alsweill for transpoirting of þe said Leutenmant and his companie, with pair furnitour and vther victuallis be sea, as convoying and overtaking of þe said Ordinance, poulder, and bullet towardis the said cuntrie of Orkney, for paciefeing of ȝour former Rebellioun, and trubillis raisit be ȝow pairintill: ȝe, making littill or na accompt pairof, nor of þe pernicious example gevin be ȝow to vtheris his Maiesteis guid and peceable subiectis, in vtheris pairtis of his dominionis, in plane contempt of his Maiestie and of his royall autoritie, vpone knowlege gevin to ȝow of the said Leutenmentis over-cuning, in maner foirsaid; ȝe maist tressonabillie convenit and musterit ȝour haill forces and cumpaneis togidder; and for augmenting of ȝour number, drew in dyueris of þe cuntrie people, quhilkis war prest and forcet, be ȝour tyrannie and oppreffioun, to tak pairt with ȝow in ȝour former Rebellioun, making vp in number ane airmie of ffyve hundreth men, airmet for ȝour guaird and defence, in so dampnable ane caus. With the quhilk number of airmet fouldiouris, ȝe marchet furth in battel array, out of þe said Toun of Kirkwall, towardis the Carnes, dyuerse dayis of þe moneth of August last, of purpois pair to haif withstod and resistit þe said Leutenment and his schipis landing: LYK AS, eftir þe said Leutenment and his cumpanie war landit, ȝe, accompaneit with the number aboue writtin, being all bodin in feir of weir, with hagbuttis, muscattis, poulder, leid, ensignes displayit, and founding of drumnis, rankit ȝour selfis in battell array, at the Baw-feild, ane littil fra the said Toun of Kirkwall, quhair ȝe, be schuiting of ȝour muscattis, maist tressonabillie maid resistance to the said Leutenment and

his companie, in pair fordward-cuning to the said Toun, thay being cled with his Maiesteis autoritie and Commiffioun to repres 5our Rebellioun: And vpone the tuentie foure day of þe said moneth of Auguft, *Robert Wynrahame*, ane of his Maiesteis Herauldis,¹ cled with his hienes displayit coit of airmes, accompaneit with Johnne Johnneftoun, trumpetour, Mr Williame Moffet, Gilbert Dundas, and Johnne Moffet, as witnesfes, accoirding to the directioun of his Maieftie and Counfall, and of þe said Erle of Caithnes, his Maiesteis Leutenment, being repairing to the Mercat-croce of Kirkwall, thair to haif charget 5ow, in his Maiesteis name and autoritie, be found of trumpet, to haif randerit the said Castell, Place of the 5airdis, Kirk, and Steiple, and vtheris houffis and strenthes keipit and haldin be 5ow and 5our rebellious associattis, 5e, and 5our airmet foul-diouris and men of weir, nocht only tressonabillie stayit and maid resistance to the said Robert Wynrahame, his Maiesteis Herald, in nocht suffering him to repair to þe said Croce, for discharge of his Message, bot maist presumptiouflie pat violent handis on his persone, tuik him, with the said trumpetour and witnesfis, as captiues and priffoneris, and cayreit him to the said Place of þe 5airdis, quhair thay war keipit and detenit be 5ow as priffoneris be þe space of nyne houris, or pairby, ane pairt of þe said Herauldis coit was revin; and efter delyuerie of the said charge be him to 5ow, þe said Robert Stewart, for randerin of the saidis Houffis, his Maiesteis letteris and charges was tane be 5ow frome him, quhillkis ar keipit be 5ow as 5it: And nochtwithstanding pairof, þe saidis Houffis and Castell was maist tressonabillie keipit and haldin be 5ow. Vpon the fordward-cuning of the quhillk Leutenment, with his forces, towardis the said Toun, 5e finding 5our felfis vnhabill² to keip the feildis, or to hald him out of the Toun, 5e maid 5our flicht and retreit to þe saidis Kirk and steiple, and to the said Castell and Place of the 5airdis: And dyuerse schotes of ordinance being schote at þe said Castell, Steiple, and vperis Houffis fortfeit and keipit be 5ow, with dyuerse messages fend to 5ow for þe peceable overgeving pairof, 5e neuirþeles maist rebelliouslie dissobeyit the saidis messages and charges, and tressonabillie schote furthe agane at the said Leutenment and his companie, and slew with the saidis schottis, Williame Irwing, lauchfull sone to vmq^{le} Williame Irwing of Saba,³ James Richesoun, Andro Adamesoun, William Robertsoun; and hurt and woundit James Kneilland, Andro Purves, Williame Flemyng, and Alexander Sudderland, thay being his Maiesteis servandis and faithfull subiectis, than in seruice with the said Leutenment; tressonabillie keipit and held the said Steiple the space of fourtie aucht houris paireftir, or pairby; and held and keipit the said Castell be the space of ffyve oulkis, or pairby; nochtwithstanding of sevin scoir schote of ordinance schote pairat, and that ane grit pairt pairof was

¹ He was 'Yla' or Islay Herald.

² Lat. *inhabilis*.

³ Elsewhere called of Cava.

batterit and dung doun with the force of the said cannoun. OFF THE QUHILKIS Treffonabill crymes aboue writtin, viz. the Treffonable dissobeying of the chairege gevin be þe said Schereff, in his Maiesteis name and authoritie, ffor randerig of the said Houfe and Palice of Birlay, eftir þe intaking pairof; the Treffonable convocatioun and raiseing of men of weir, and mustering of thame in airnes, to þe number foirsaid, and cuming fordwardis with a pairt of thame in battell-array to þe said Bowa-croce, for the slauchter of the said Schereff; the Treffonabill forgeing, making, and subscryveing of the foirsaid Band, for taking pairt with the said Robert, in his former treffonabill courfes; and causeing the subscryveris, and vperis pair aideris and assisteris, be solemne aithes, to sueir to die and leve with him, aganis all maner of persones, his Maiestie our sacred fuerane nocht being exceptit; the Treffonabill taking and surprising of þe said Castell of Kirkwall, Kirk, and Steiple pairof, Place of the 3airdis, and vtheris houffis, mannit and keipit as said is; the Treffonabill taking of þe said Mr Johnne Fynlafoun, Schereff, and Barnard Stewart, captiues and prissoneris, being his Maiesteis frie and faithfull subiectis; the Treffonable resisting of the said Erle of Caithnes, his Maiesteis Leutennent and Commissioner, in vseing of his said Commissioun, with his cumpanie and men of weir, and slauchter of his Maiesteis faithfull subiectis, being in his Maiesteis seruice; and beiring out of the said assault maid be the said Leutennent, to the saidis Castell, Kirk, and Steiple; the Treffonabill taking of þe said Robert Winrahame, his Maiesteis Herauld, being directit be his Maieftie and Counfall, with his Maiesteis displayit coit of airnes, to charge the said Robert and his companie, to rander the saidis Houffis and strenthis, be vertew of his Maiesteis Letteris direct for þat effect; and Treffonabill dissobeying of the said charge, and taking of the letteris and charges fra þe said Herauld, and keiping pairof, in maner foirsaid; 3e, the said Robert Stewart, Andro Mairtene, Thomas Blak, Archibald Murray, Alexander Legget, and Thomas Layng, and ilk ane of 3ow, ar airt, pairt, red (*advice*), and counsell; att the leift, of ane or vther of the saidis Treffonabill crymes, committit be 3ow and 3our rebellious associattis aboue writtin; off the special causeing, sending, hounding out, airt, pairt, counsell and devyse of the said PATRIK, lait ERLE OF ORKNAY; quhilk is notourlie knawin. LYK AS, 3e haif Confessit the samyn, be 3our Depositiones.—FOR the quhilkis 3e aucht and fould be pwneift and denuncet as Tratouris; to þe terrour and exampill of vperis to attempt the lyk Rebellioun heireftir.

MY LORD ADUOCAT producet ane WARRANT of the Counsell, direct to his Lordschip, anent the formeing of the Dittay aganes the persones on pannell, and thair persute for the crymes contenit in the Depositiones; quhilk Warrant is daitit the 28 December, 1614. My Lord Justice and Justice Clerk producet, also, ane Warrant, direct be the Counfall to thair Lordschipis, for halding of Court,

and miniftrating of Juſtice vpon the perſones on pannell. My lord Aduocat producet the Dittay; and conforme to the Counfallis Warrant, and for obedience thair of, declairit, he was reddie to inſiſt in the pannellis perſute, for the crymes thairin contenit; and thairupon aſkit inſtrumentis.

The pannell being aſkit, Gif thai had ony prelocutouris for thame to defend; or gif thay had ony thing to allege, quhy the Dittay producet be my lord Aduocat ſould nocht pas to the knowlege of ane Affyſe? For anſuer thairto, Robert Stewart declairit, that thai wald vſe na prelocutouris, bot God, in this matter.

ASSISA.

Mr Robert Henderfoun of North Rannaldſay,	Andro Anderfoun, alſo his ſervand,	Williame Sinclair of Tullope,
Ednard Scola, ſumtyme Scheref of Orknay,	Henri Sinclair, alſo his ſervand,	Andro Purves, indueller in Edr,
George Mowat of Sewnane,	James Hammiltoun, wrycht,	Williame Robieſoun, thair,
James Irwing, ſervand to my lord (Erle of Cathnes),	James Workman, paynter, burges of Edinburgh,	Clement Kincaid, thair,
	Johnne Quhyte, wricht, burges of the Cannogait,	George Redik of,
		Robert Keith, mercheand burges of Edinburgh.

It is allegit be Thomas Layng, ane of the perſones on pannell, that George Mowat, James Irwing, (and) Andro Anderfoun ar ſervandis to my lord of Caithnes; and thairfoir, hai nor nane of his lordſchipis ſervandis can pas vpon the pannellis Affyſe; in reſpect, that the ſaid Erle and his ſervandis war perſewaris of the pannell within the Toun of Kirkwall, Kirk, Steiple, and Caſtell thair of; and thay war tane and apprehendit be him (the Erle), and (thay) behavet thame ſelfis as pairtie, in thair perſute of thair lyves.—It is anſuerit be my lord Aduocat, that the allegiance aucht to be repellit; in reſpect my lord of Caithnes and his ſervandis had na particular¹ of his awin aganis the pannell; bot only was imployit as Commiſſioner and Leutenent for his Maieſtie to pas to Orknay, and thair, in his Maieſteis name and authoritie, to apprehend the perſones on pannell, for thair Rebellioun, and halding and ſurpryſeing of his Maieſteis Caſtellis and Houſſis thair: ffor how fall the pannellis giltines of the crymes contenit in thair Dittay be tryit,² bot be ſic as beſt knawis the verritie of the factis mentionat thairintill? And thairfoir, nochtwithſtanding of the ſaid allegiance maid aganis the Erle of Caithnes ſervandis, they aucht to be admittit vpon this Affyſe.³

THE JUSTICE Admittis THE ERLE OF CAITHNES *ſervandis* vpon the Affyſe, nochtwithſtanding of the allegiance; and that, in reſpect of my lord Aduocatis anſuer maid thairto.

¹ Quarrel; feud. ² Proved; eſtabliſhed. This forcibly illuſtrates the remarks which have frequently been made, in various parts of this work, regarding the anomalous character of a Jury-man; who was generally ſelected, as perſonally knowing the facts of the caſe; and was *therefore* conſidered as beſt qualified to return a true verdict, being in fact a witneſs in the Trial; and accordingly, deciding on his previous knowledge, whereby he was liable to be biassed by his prejudices.

[PRIVILEGE of his Majesty's Servants in THE CASTLE OF EDINBURGH, as being exempted from passing upon Assyses.]

James Hamminiltoun, wricht, and James Workman, ffor thame selffis, and in name of the remanent ordiner fervandis of his Maiesteis CASTELL OF EDINBURGH, funmond to pas vpone this Assyse, declairit, in respect thai war ordiner fervandis to his Maiestie within the said Castell, and thairfoir war, be the Law and daylie practik, exemit¹ fra all maner of Assyses, desyret, accoirding to thair privilege, thay sould nocht pas vpone this Assyse.—My Lord Aduocat declairit, that thair passing vpone this Assyse sould nawayis preiudge thame of thair Privilege: And thairfoir, feing this persute is a matter that concernis his Maiestie him selff, for Rebellioun committit aganis his royall autoritie, he thairfoir desyret my Lord Justice, that thai sould be admittit vpone the said Assyse, vnder protestatioun, that thair Privilege be nawayis hurt or preiudget heireftir.

QUHILK Protestatioun maid be my Lord Aduocat, in fauouris of the ordiner fervandis of the Castell, the Justice Admittis; and Ordanis thame to be Assyfouris at this tyme, but² preiudice of thair Privilege.

My Lord Aduocat takis instrumentis of the sweiring of the Assyse; and estir reiding of the Dittay, and the pannellis accusatioun, be vertew thairof, of the tressonabill crymes mentionet thairintill; ffor verificatioun thairof, producet my lord of Caithnes Commissioun of Leutenmendrie, grantit to him, to the effect thairin contenit, of the dait the saxt day of August, 1614 last; the pannellis hail Depositiones, maid be thame in presens of the lordis of his hienes Previe Counsell; and thair Confessiones, mentionet thairintill; togidder with Robert Wynearahame, Herauld, his Executioun³ and deforcement, with the forme and maner thairof, at lenth insert in the said Executioun, subscryuit and stampit be him; all ratifeit and approvin (be his grit aith Judicillie tane be the Justice) to be of verritie, in presens of the pannell: Quhilk Declaratioun his lordschip repeitis to the Assyse, with the Judicill Confessioun maid in thair presens be the said Robert (*Stewart*), of his giltines of the hail Dittay; and be *Andro Martene*, of the wryting of the Band, and being within the Castell with Robert the tyme of the Assault maid thairto be my Lord of Caithnes; the Judicill Confessioun maid be *Thomas Blak*, of his taking and halding of the Steiple; the Judicill Confessioun maid be *Archibald Murray*, of his being in the said Steiple, and cuming with Robert to the Castell, at the intaking thairof, and cutting of the brig; the Judicill Confessioun maid be *Thomas Layug*, of his being with Thomas Blak

¹ *Exemed*, exempted.

² Without.

³ An official attestation by Heralds and Messengers-at-arms, that they had *executed* the duty entrusted to them. After the rough usage of Islay Herald, already related, and his subsequent '*Execution*,' it is startling enough to the mere English reader, to be informed of his appearance before the Justice, and his making oath, and so forth.

and Patrik Halero, at the taking of the Steiple; and the Judicial Confessioun maid be *Alexander Legget*, of his keiping of the House of the Zairdis vnder the said Robert and his companeis aganis the Leutenment: And in respect of the premisses, protestis for Wilfull Errour aganis the Assyse, gif thai Acquit.

ROBERT STEWART offeris him selff in his Maiesteis will, ffor the haill crymes contenit in his Dittay.—ARCHIBALD MURRAY offeris him self in his Maiesteis will, ffor being in cumpany with Robert, at the cutting of the brig of the Castell, eftir surpryfeing thairof.

SPECIAL VERDICT of the Assyse.

THE ASSYSE, all in ane voce, be þe mouth of þe said Mr Robert Henderfoun, chancellor, stand, pronuncet, and declairit the foirnamet persones on pannell to be GILTIE and convict of the perticuler crymes following, to wit: THE said *Robert Stewart*, bafe sone to þe said Patrick, lait Erle of Orknay, to be Giltie, culpable, and convict of the tressonabill disobeying of the charge gevin be þe said Mr Johnne Fynlafone, Schereff Depute, in his Maiesteis name and autoritie, for randeriing of þe Hous of Birsay, eftir his craftie taking and surpryfeing thairof: OFF the tressonabill convocating and raiseing of men of weir, and mustering of thame in airmes, to the number of nyne scoir persones, and cuming fordwardis with a pairt of thame, in battell aray, to the Bowa-croce, of intencion to haif slane the Schereff: OFF the tressonabill fforgeing, making, and subscryveing of ane Band, for taking pairt with the said Robert in all his tressonabill courses, and in causeing the subscryueris and vtheris pair aideris and assisteris, be pair solemne aithes to fueir to die and leve with him aganis all maner of persones, his Maiestie our sacred souerane nocht being exceptit: OFF the tressonabill taking and surpryfeing of þe said Castell of Kirkwall, Kirk and Steiple of þe said Toun, with the Place of the Zairdis, and vtheris Houffis pertening to his Maiestie within the said Toun: OFF airt and pairt of þe tressonable taking of þe said Mr Johnne Fynlafoun, Shereff depute, and of Barnard Stewart, captiues and prissoneris, thay being his Maiesteis frie and faithfull subiectis: OFF the tressonable resifiting of þe Erle of Caithnes, his Maiesteis Leutenment and Commissioner, with his companie of men of weir, in executioun of his Commiffioun; and of the slauchter of dyuerse of his Maiesteis faithfull subiectis, being in his Maiesteis seruice with the said Leutenment. AND in the tressonabill beiring out of þe said Assault maid be the Leutenment aganis þe Steiple, Castell, and vtheris strenthis keipit be him within the said Toun of Kirkwall: OFF airt, pairt, red, and counsell of the tressonable taking of Robert Wynrahame his Maiesteis Herald, cled with his Maiesteis coit of airmes, being directit be his Maiestie and Counsell to charge þe said Robert Stewart and his rebellious associatis to rander þe saidis Houffis and strenthis, be vertew of his Maiesteis Letteris to that effect: AND of the tressonabill disobeying of the charges, and taking fra the said Herald of his Maiesteis Letteris and charges, and keiping pairof, in maner specifeit in his Dittay: AND that, conforme to þe said Robert and his complices Depositiones; and of his Judiciall acknowledgment of his giltines of þe saidis crymes, and of his Judiciall offer of becuming in his Maiesteis Will, as giltie and culpable pairof. THE said *Thomas Blak, alias Douglas*, to be flylet, culpable, and convict of the tressonable surpryfeing and taking in of the said Kirk and Steiple of Kirkwall, and haldiing the samyn aganis þe Erle of Caithnes, his Maiesteis Leutenment: AND for cuming fordwardis with þe said Robert Stewart, in oppin and arrayit battell, aganis þe Leutenment at þe Baw-ley; and withstanding of him and his companie, a littill after his landing, and repairing towardis the Toun of Kirkwall for discharge of his Commiffioun: AND for the tressonabill assisting of þe said Robert Stewart, in all his tressonabill interpryfes aganis þe said Leutenment and his companie, fra his intaking of þe said Kirk and Steiple, to þe tyme of þe randeriing pairof to þe said Leutenment. THE said *Archibald Murray*, to be Giltie and convict of the tressonabill plotting, and being vpone the counsell with the said Robert Stewart, within the Palice of Birsay, of þe taking and surpryfeing of þe

Kirk and Steiple, and of pe said Castell; and paireftir, accoirding pairto, ffor pe treflonabill cuming with Patrik Halcro, Thomas Blak, and vtheris, and taking and furpryfeing of the said Steiple: AND in the treflonabill affisting of pe said Robert in taking and furpryfeing of the said Castell, and cuting of pe brig pairof, eftir pai war maisteris of pe fame: AND of the treflonabill keiping of pe Houfe and Palice of Birfay vnder Robert, as Maifter pairof, to the tyme he was charget be the Leutenent to rander the famyn. THE said *Andro Martene*, to be Giltie and convict of the treflonabill making of pe Band specifeit in the Dittay, and devyfeing pairof: AND of his treflonabill being within the said Castell with Robert, and halding pairof aganis the Leutenent: AND of airt, pairt, red, and counfall with pe said Robert Stewart, in his haill Rebellioun in Orknay, in maner contenit in his Dittay. THE said *Thomas Layng*, to be Giltie, culpable, and convict of his treflonabill being in companie with Robert at his cuming with displayit benner, in battell aray, to the Bowa-croce, of intentioun to haif flane pe Schereff: AND of the treflonabill taking and suppryfeing of pe Kirk and Steiple of Kirkwall: AND of his treflonabill being in companie with Robert, at his cuming with flyve hundreth men in airmes to the Baw-Ley, aganis the Leutenent: AND for his cuming bak to the Place of the 3airdis, and remaning pair with Robert till a littill befor pe randereng of the Hous pairof; conforme to his Depositiones. AND the said *Alexander Legget*, to be Giltie, culpable, and convict of the treflonabill affisting and being in companie with the said Robert, with displayit benner, at pe Bowa-croce: AND for being in companie with Robert, and affisting him aganis the Leutenent, in keiping of pe Houfe and Place of pe 3airdis: AND for the treflonable affisting and taking pairt with the said Robert, and being in companie with him at the Carnefs, in refisting pe Leutenent pair; conforme to his Deposition.

Vpone the quhilk determinatioun of the said Affyse, my lord Aduocat askit instrumentis.

SENTENCE. In regaird of the quhilk convictioun, my Lord JUSTICE, be the mouth of Johne Dow, dempfter of Court, Ordanit the saidis perfonen on pan-nell to be tane to the Mercat-croce of Edinburgh, and thair to be Hangit vpon ane gibbet, quhill thay be deid: And all thair landis, heritages, takis, fteidingis, rowmes, poffeffiones, guidis and geir to be fforfalt and efcheit to his hienes vfe, as Giltie and Convict of the saidis treflonabill crymes.

APPENDIX OF ORIGINAL DOCUMENTS,

ILLUSTRATIVE OF THE TRIAL OF ROBERT STEWART AND OTHERS.

I. MINUTES OF THE PROCEEDINGS OF THE PRIVY COUNCIL OF SCOTLAND.

(1.) Jan. 14, 1614.—ROBERT STEWART, bafe sone to THE ERLE OF ORKNAY, being brocht befor THE COUNSELL, for giveing of furtie not to repair to thefe boundis, without HIS MATIES Licence; THE BISCHOPPE OF ORKNAY hes gevin his word and promise for him; and the Counfell hes tane his awin aithe and promise, that he fall not repair to the saidis boundis. And this courfe is tane be the Bifchopis advyse and speciall procurement.

(2.) Jun. 28, 1614.—THE ERLE OF ORKNAYIS bafe sone having latlie gone to Orkney, aganis his faith and promise maid to the Counfall in the contrair; and he having tane with him some fouldiouris, and furpryfit the *Place of Birfwall* (Birfay) in Orkney, THE COUNSALL, vpoun the first informatioun maid to thame thairof, directed charges aganis him for randereng of the Houfe; and with that, thair wes ane Proclamatioun direct, prohibiting all his MATIES fubiectis to fupplie him with onie neces-

fairis, or to mak payment to him of ony of the dewtyis of *Orkney* or *Zetland*. The chaarges for rander- ing of the Houfe being execute aganis him, he immediatlie caufes found his trumpet vpon the heid of the Houfe, and difchaarges xxx or xl fchote of mufcat at the Officer and witneffes, as wes this day affirmit in prefens of the Counfall be *Sir James Stewart of Killith*.¹ Whairvpon THE COUNSALL has exped ane Commiffione to him, in ample forme, for perfute and affadging of the Houfe, with all kynd of force and wearilyk ingyne.

(3.) Jul. 28, 1614.—THE ERLE OF ORKNAY his bafe fone, accompanyeed with three or four fcore of perfones, doeth yett continve there foolifche courfes in Orknay, and fill keepes *the Houfe of Birfay*. There hes beene fome conference in THE COUNSALL anent the fuppreffing of his infolenceis; and it is thoght be the moft parte of the Counfale, that *Sir James Stewart*, in refpect he is Schiref, Judge, and Chalmerlane of the countrie, fhould be employed in that bufynes. The queftion ftandes anent the forme, how *Sir James* fhall go there, and how he fhallbe accompanyed? Some ar of oppi- nion that the forces of the countrey ar fufficient to fuppres this REBELLION, althoght the authoures wer ten tymes mo in number. Otheres ar of oppinion, that it is hard for *Sir James Stewarte* to hazard him felf with the countrey people; and that it is expedient that he have three fcore men, vnder wages, to attend vpon him. THE COUNSALE, at there nixt meeting, ar to tak fome courfe in this bufynes.

(4.) Jul. 29, 1614.—SENCE the wrytting of the Notes aboue written, there is fure aduerteifment come from ORKNAY, that the faide *Erle* his bafe fone hes furpryed *the Churche and Steple of Kirkwall*, and the *Girnell-houfe*, (whiche ar places of gryte ftrengh,) and that *the Scheref-depute* hes reteered him felf to *the Cafle*, where he is inclofed be *the Bafarde*; and that there is a publick and oppen REBELLION profefed and avowed in that countrey. THE COUNSALE, beeing enformed heer- of, this morning airie (the 29 of this instant) thay convened in the Over Counfale-hous; and *Sir James Stewart* beeing at lengthe hard anent his refolution and purpofe in this bufynes, he hes vnder- tane to go there in perfone, and to adventur and hazard his owne lyff in the fuppreffeing of this REBELLION. He hes gotten a Commiffionn to tak vp fyve hundrethe men, vnder wages, and he is verie bufye to amaffe this companye togidder, at the leaft fa mony as vpon the fuddane he may gett; and both be found of trumpett and ftryking of drwm, warning is geven to all fuche as will ferue to adreaffe thame felves to him, to inroll there names and refane there pay. He is of oppinion that within three or four dayes he fhall have iij^e thouldiours in reddynes, whome he entendes to fend away be fea with the firft occafion. He is to go him felue, be land, accompanyeed with fuch voluntares of his kin, frendthip, and acquaintance, as he may enduce to go with him; of whome he is of opinion to mak vp a companye of three or four hundrethe men. *The Lord Lovat* hes promefed him the affiftance of two or three hundreth hable footemen, well furnifhed in all thinges neceffar. There is a ample Commiffion of Lieutennandrie and Jufticiarie exped vnto him, for the perfute of the lymmaris, with fyre and fworde. PROCLAMATIONES ar exped againes all betweene sextie and faxteine yeeres, within the boundes off *Caithnes*, *Sutherland*, and *Orknay*, to go forward with *Sir James*, and to affift him in this feruice; and a other Proclamatione, prohibiteing the refatt, fupplee, or furnitheing of thir Rebelles with ony thing comfortable or neceffar vnto thame; with a promefe of pardoun to fuche of thir Rebelles (who ar not cheef), that will leave *the Bafard*, addrefse thame felues to *Sir James*, and do feruice worthie of favour.

All fchippes and velhelles bowne to *Orknay* ar ftayed, till *Sir James* and his company be imbarked and away.

Sir James will, God willing, have his whole forces togidder to fett fordwart, him felf be land, and his footemen be fea, within fyve or fax dayes; and aduerteifment fhallbe fra tyme to tyme fend vpe, of the progres of his proceedinges, and of his fuccelle in his feruice.

¹ Afterwards Lord Ochiltree.

(5.) Jul. 7, 1614.—INFORMATIOUN being maid to fume of THE COUNSALL, that ane poit-boy was cum frome *Orkney* with Lettres to the lait ERLE OF ORKNEY, and that he was to retorne agane with ane anfuier to theis Lettres, directioun was gevin for the feircheing of him : Lyikas, he was apprehendit vpoun the fyft of this instant within this Burgh, and producet befor the *Counfull*, with ane number of Letteris, the most pairt of thame direct to *Caitnes* men. Becaus the poit-boy was to go towardis *Orkney*, that way, he was verie straitlie examinat vpoun many particularis ; whois DEPOSITIOUN, with the copie of that Letter fend be the *Erle* to his sone *Robert*,¹ is heir incloist, immediatlie vpoun his examinatioun. Thrie of the *Gaird* was directed to *Dumbartane* to mak feirche for the *Erle* his wryttis ; and to bring frome thence one *Scharp*, the *Erle* his servand, by whome his Letteris is writtin. They depairted frome this Burgh upoun Twysfday the fyft of this instant, about ten of the klok at night, and come to the *Castell of Dumbartane* the morne thairefter, about fyve of the klok in the efternone, bot could not have entrie ; being anfuierit be sum servandis from the wall-heid, that the *Constabill* was in *Edinburgh*, and that one *Robert Knok*, wha had the chaarge of the Hous wnder the *Constabill*, was in the *Toun of Dumbartane* ; and whill his return the zettis could not be opined. The *Gaird*, vpoun this refusall, going to the *Toun*, they forgadered,² in the mid-way betuix the *Castell* and the *Toun*, with the said *Robert Knok* ; vnto whome they haveing impaired thair Commissioun and warrand, he tauld thame plainlie, that thair was no entrie to be had, that night, within the *Castell* ; and appoynted thame the morne, at awght of the klok. They haveing preceisslie keipit that tyme, and come to the *Castell-zett*, thair was many idill ceremonies vsed, befor they could haue entrie ; and at last, being reassued within the *Castell*, *Sharp* was amissing, and had eskaiped ; and feirche being maid for the Letteris and wryttes, thair was ane number of comptis and wryttes gottin, bot serving nothing to the purpois.

Thair is an ampill COMMISSIOUN past and exped to *Sir James Stewart*, *Shereff of Orkney*, and his deputtis, for the perfute and assaidgeing of the *House of Birsay*, with fyre and sword, and for apprehending *Robert Stewart*, and exhibitioun of him befor THE COUNSALL.

(6.) Aug. 3, 1614.—COMMISSIONIS being past and expeid to *Sir James Stewart of Killeith*, for suppressing of THE REBELLIONE IN ORKNEY ; and he being in the preparatiounne of his forces to haue gone thair for that eirand ; and promise being maid to him, be the *Lord Lovatt*, of sum thrie or four hundrethe *Hiland-menne*, to haue assisted him in that seruice ; sum Gentlemen of the Cuntrey of *Orkney*, being heir, and feiring that suche a number of peple as wald accompany *Sir James* wald be a greit burdyn to the pure cuntrey, and that they wald appease the cuntrey people at thair pleasure, they thairfore delt with *Robert Monteith of Eglefshaw* to mak ane ouerture to THE COUNSALL, for doing of this seruice, with les chaarges to HIS MA^{TIE} and greittare ease to the cuntrey nor possiblie could be done be *Sir James*. ROBERT MONTEITH being admittit to audience, he hes offerit and vndertane, in respect of the freindschipe and assurance whilk he will find in the cuntrey, to do this seruice, with the supplie of threescore fouldiouris allanerlie,³ and ane *Herald* and *Trumpett*, at HIS MA^{TIES} charges, with ane ship to transport, he hes vndertane to recover the haill Houses and strenthes tane and hauldin in that cuntrey aganis HIS MA^{TIE} ; and outhir to apprehend the Rebellis, or then to put theme of the cuntrey : He hes vndertane, yf ony Houses or strenthes be assadged, to raise the seage within fourty-aucht houris aftir his cumming in the cuntrey. And for the performance of thir his OFFERIS, he hes offerred the *Erle of Caithnes* and *James Sincler of Murchill* cautionouris.

Sir James Stewart being hard vpoun the Offeris maid be *Robert Monteith*, he hes willinglie agreeit that the chaarge of the seruice be committit vnto him. Whilk accordinglie is done ; and he is to imbarke with his forces betuix and the tent of this instant ; and he hes presentlie fend away sum of the Gentlemen of the cuntrey, to haue the haill cuntrey in reddines to attend⁴ his landing.

¹ See this Appendix, No. (20.)

² Rencountered ; met with.

³ Only.

⁴ Await.

(7.) Aug. 24, 1614.—THE EARLE OF CAITHNES,¹ with two shippes well provyded with all warrelyk prouision, made faile towards ORKNAY, vpon the xx of this instant, haveing the wynd verie fauorable; and it is looked that he wes in *Orknay* vpon the 22 of this instant, in the morning. How fone ony aduerteifment shall come from him, or ony otheres in that countrey, HIS MAIESTIE shall gett notice thereof, with all convenient diligence.

(8.) Oct. 5, 1614.—DIRECTION is geven to the Captane of the Guarde, to send tuelf of his company to Dumbartane, and to bring frome thence, to this burgh, THE EARLE OF ORKNAY. And direction is gevin to the Shiref of Dumbartane to assit the convoy of the Earle from Dumbartane to the Falkirk, where the Shireff of Linlithgow is to receaue him, and to mak his convoy frome thence to this burgh.

(9.) Nov. 17, 1614.—THE ERLE OF CAITHNES, having left THE LAIRD OF RATTER, his brother, as depute for him, in the Officeis of JUSTICIARIE and SHEREFSHIP of ORKNAY; and having gevin directioun to him to demolishe the *Castell of Kirkwall*, conforme to the Warrant of the *Counsell* send to him for that effect, the said *Laird of Ratter*, by his Petitioun, gevin in this day to THE COUNSALL, meant him self,² that he wes a Gentleman of small moyene,³ having nouthur landis nor rentis in *Orknay*; and that his remaining thair vnder the burdeyne and chearge of the saidis Officeis, wald draw him, in shorte tyme, to spend all his rentes, to his greit hurt and inconvenient; besydes the neglect of his awin affaires and busynes, at home. And thairfor, his desyre was, that he might vnderstand, vpoun what conditione he sould remaine in that cuntry, and vpoun whose chargeis and expensfis the House sould be dimolished? His Petitioun being hard and deulie considerit, THE LORDES hes allowit vnto him ane hundreth markes monethlie, dureing his aboade in that cuntry, for his charges and expensfis. And tuitching the dimoleifching of the House, thay haue ordanit him to do the turne, and the expensfis that he fall bestow thairvpone, according as the same salbe verified and testified be the *Bishop of Orknay*, vnder his hand, salbe repayit vnto him be the *Thefourare Depute*.⁴ And whereas, the remaning of the *Laird of Ratter* in that cuntry, wilbe chargeable to HIS MAIESTIE, the cuntry being now reasonabe weele satled, without appeirance of ony new commotioun or trouble; thairfor, his Maieftie wold be pleasit to resolue vpone some course, anent the Governament of that cuntry, and whom his Maieftie will putt in the trust of that charge; to the effect that, vpoun the signification of his Maiefties pleasour thairanent, the *Counsell* may tak ordour, and gif directioun thairin accordinglie.

II. DISPATCHES FROM THE EARL OF CAITHNESS, &c. TO THE KING AND SECRETARY OF STATE,⁵ &c.

(10.) LETTER, the *Earl of Caithness* to *Lord Binning*. (Aug. 25, 1614.)⁶

RIGHT HONORABILL MY VERIE GOODE LORD,

PLEIS your lo. We arryved at Castell Sinclair vpon the 22 of this instant; whair I stayit that night, and aduerteifed the Caithnes men to be reddie to follow me to Orknay, when I suld command theme. I imbarcked with me about threttie of theme, and cam to Selwik, within tuo myles to Kirkwall, vpoun the 23, about sex eftir none.

The 24 I sent the Herald with Notairis, Messingeris, and Witneffes to mak proclamatioun at Kirk-

¹ The procrastinating conduct and vacillation of THE PRIVY COUNCIL, in a matter which bore such a formidable aspect at its commencement, says very little for their ability or zeal, in the discharge of their important trust. The only apology which can be framed for them, is the circumstance of their subserviency to THE KING, who was resident at so great a distance, and without whose *fiat* they dared not take any important step. ² Made supplication and complaint; humbly remonstrated.

³ Means; fortune. From Fr. *moyen*. ⁴ In the Books of the Accounts of the *Lord High Treasurer of Scotland*, Gen. Register House, the following entry occurs, under date April, 1615. 'ITEM, to ane Poist passand to Edr. to my Lord Chancellor, at Dunfermling, to subservyne ane Commissioun for Walter Richie, for demolishing of THE CASTELL OF KIRKWALL, xxiiij s.'

⁵ Thomas Lord Binning, afterwards Earl of Melrose, &c.; which last title he afterwards exchanged for the Earldom of Haddington. ⁶ From the Original in the *Denmylne Coll.* of MSS. Adv. Library.

wall; who wes presentlie taikin, as he entered the Towne, most iniuriouſlie and diſpytfullie abuſed, bothe in word and deid; the Letters taikin frome him be Robert; and him ſelf, with ane Miniſter, and all otheris that accompanied him, keipit in diuerſe houſes, all that day, till the evening; to whiche they, the ſame day, did ad this alſo, that to the number of thrie hundreth menne, with diſplayed enſigne, did fort¹ out of the Towne, and maid prouocatione to me, whair I lay vpoun the ſhip-board. For that the Proclamations (were) thus impedit, I wes forced vpoun the 25 to wreitt diuerſe Letteres, and ſend throuche the cuntrey, to aduerteis and command the Gentlemen and vtheris to reſort to me; in whome, for the moſt pairt, I did not find that reddie willingnes whiche I expected; ſo that I wes forcit to ſend to Caithnes, for ſupplie of my owne menne; who, cuming to me vpoun the 26, and having then aſſembled about two hundreth of the cuntrey menne, we tuk land; and at the ſame tyme, about ten houris, we landit the battering peice with hir careage, whiche, by great force of men, and ſome difficulties throuche the deipnes of the foyll, wes presentlie, and with all poſſibill diligence, drawin neir tuo myles, towardis the Towne; and the ſame day, about thrie aſtirnone, planted at Weyland, within ane half quarter of myle to the Caſtell. We merched in good ordour, with colouris diſplayed; and as we approached, the Rebellis ſorted out,¹ boasting that they wold fight with ws, thought we had bein tuentie to one; and having their Ordinance in reddines to haue played vpoun ws from the Caſtell, Stepill, and Tour of the 3eardis, and diſchairgeing one or tuo of the ſame againſt ws, ſo ſoone as we cam vnder their fight, I commandit the Cannoners² to flute at the Caſtell; who did their pairt ſo weil, that be the ſecund ſchott one of the turrettis vpone the heade of the Houſe wes pearſed and almoſt beaten down, to the great terrour of the Traitouris; and other thrie being fhott, one aſtir another, did all hit, bot not hurt ſo muche.

In the meantyme the Rebellis being provoking and braking ws vpoun the Ball-ley, to the number of ſex ſcoir men, our Captanes and ſouldiouris went directlie, and with goode courage, toward theme—and without ony reſiſtance or hurt did compel theme to retreat ſchamefullie. In whiche flight, about fyve of preſſed poore menne of the cuntrey did abandon theme.

The Captanes, ſouldiouris, and Gentlemen of the cuntrey, with thair menne, did presentlie follow theme at their heillis, entered the towne the ſame night about ſex houris, incloſed theme in their holdis, and now poſſeſſes the Towne. That night I ludged about the Ordinance, and guairdit it and our ſelfis with the reſt of our menne.

This day we ar buſie about the landing of the great Peice of Ordinance, that we may batter bothe the Caſtell and the other Houſes, which annoyas ws and our men in the Towne; and mak our ſeruice the ſchorter.

The Rebellis ar moſt obſtinate, and maliciouslie reſolued to hold out to the deathe, thought I have ſent Miniſteris and their owne freindis to inſtruct, admoniſh, and threattin theme.

Their is heir no bread, nor drink, nor vther victuallis to be had for pryce, prayer, or command; ſo that I muſt ather ſeik preſent releif of ſome victuall from Caithnes, or ſuffer the ſouldiouris to ſtarue for want. And if they ſhall endure and continew in thair obſtinacie, as they haue wowed to do, thair will not be pouder, leid, billettis, nor matche to ſerue for this ſeruice; in the which I ſie great dangeris, and manie more difficulties then I culd foirſie.

In reſpect whairof, I will intreat your goode lo. to acquent my Lord Theſaurer and remanent Counſallouris; and with all cair and diligence prouyde, betyme, that money, pouder, pillettis, and chieflie ſum reaſonabill quantitie of victuall, whiche can not be had heir, may be ſent to be diſpenſed and ſold to the ſouldiouris and vtheris that haue neid, vpoun reaſonabill pryce; whairby our great neceſſities may be ſupplied, with litle or no hurt to his Ma^{ties} money.

As thingis fallis out, ſo ſhall your lo. be aduerteiſed from tyme to tyme. And now, after the trew

¹ Fr. made a *sortie*.

² Artillery-men.

narratione of our proceedings and present estaitt, I refer the consideration and cair of all to your lo. wisdom, and fall euer rest,

Your lo. euer to be commanded,

CAITHNES.

To the right honorabill my verie goode lord, MY LORD OF BINNING, his
Maiesteis SECRETARE OF SCOTLAND.

(11.) *The Erll of Caithnes LETTER to my Lord Thesaurar Depute.*¹

MY VERREY GUD LORD AND COUSING,

I HAUE reassuit findrie of your ll. most kynd Letteris, and your ll. greit cair in fending all thingis necessar for ending of this seruice. I can not gif your l. dew thankis; bot I will account it ever to procede of pe lufe pat ye beir to this MATIE and lufe ye caryit to me as your kynnisman, quhome your l. fall ever haue pouer to command me, so long as I braith. It hes pleasit God, of his mercie, the penult of pis instant, to mak ane finale end of pis seruice in my handis. The forme, maner, and all pat hes hapnit, I haue writtin at greit lenth to my gud *Lord Secretar*. I haue directit pe Pinage home and pe Bark² pat come last; and hes dischargit the Captane, Officeris, and fouldaris, pe last of pis instant. I grant pis seruice hes bene expensue to his Matie; bot quhat hes bene wairit,³ I hoip at my cuming to put it all vp agane, be munitioun, to pe *Casill of Edr*. I hop to bring with me more then tuentie thousand merks worth of brafin ordinance.⁴ As for my panis, hazard, and travellis, I will remit that to his most sacred MATIE. This,⁵ leving to falsche⁶ your ll. with mony woirdis, I end, willing your ll. ever to esteeme of me as ane kynnisman pat your ll. fall have ever pour to command, according to my pithe. This taking my leif, I commit your ll. to God, and I fall ever rest

Your ll. coufing, ever reddie to be commandit,

CAITHNES.

AT KIRKWALL CASTELL, pe last of September, 1614.

(12.) *The Erle of Cathnes LETTER to the Secretar,*⁷ *reassued 10 Oct. 1614.*

MY VERRIE SPECIALL GOOD LORD,

IN respect your Letter, daitit from Edr the fyfte of September, and come in my hands the fourteint of this instante, declaring your lo. diligence for expeding of all necessars for this seruice, quhich I haif more nor neid for daylie, I and all that is heir with me hes hote seruice with thir most bluidie and barbarous Rebeles and Traitouris. Thay haue killed four, and the last is ane Willeam Irwine, ane Orkney Gentleman,⁸ one quho, since his deathe, I have hard was ane inoyenour, and ane greit freind to the Traitour. God is iust in his judgementis, for amongs ws all standing by him he is schote dead, vponne the nyntente of this month, at twa houres in the efter none; ane cuntrie man of myne schote through the arme; and ane fouldiert schott behind beneth the bak; and one flaine in the Castell. All this is done this last dayis skirmishe. Thair is not one day that I am idle, except the Sabothe. My lord, I will assure your lo. thay ar most desperat and cruell Tratours, and (this) is ane verrie strong hould, and nothing can do to thame except the cannone.

Quhair your lo. hes fett doune in your Letter of his Maties advyse, that I sould be spairing to grant pardone to notorions Rebellis and malefactoures, my lord, God forbid pat I sould tak vpon me to grante any pardone to any quho hes so heighlie offendit his sacred Matie. Befoir his Matie were not repairit, to his honour, be all the lyfes of thir bluidie Tratours that is within this diuilisch Castle, I (wald) rather be buried. Heirfoir, my lord, I will be plane with your lo. as to ane faithfull counsellour

¹ From the Original, *Dennylyne MSS.* ² Two vessels which had been sent with supplies and dispatches to this Expedition, which were known by the name of the Pinnace and the Barque. ³ Expended. ⁴ See Notice to the Trial of the *Earl of Orkney*. ⁵ Thus. ⁶ Fr.; trouble. ⁷ From a copy preserved in the *Dennylyne Collection* of MSS. Adv. Library. ⁸ 'In this siege the Lieutenant lost four men only; namely, William Irwyn, son to William Irwyn of Saba, James Richardson, Andrew Adamson, and William Robinson; who were killed all by shots from the Castle. Many were wounded and hurt, but thereof recovered.'—*Spotswood's Hist.* p. 520.

to his Maiestie. I find none bot the name of *Sinclar* in all this land bot hes bene in counsell of this Rebellion, or eles airt and pairt; for thair is ANE BAND, subscryuit be SEVIN HUNDRED of this cuntrie people, to *Robert Stewarte* and Patrik Halero, to die and leine with thame. This REBELLIOUNE was devyfit in Edr Castell in Winter last; and giue God grant me that gud fortune to get on lyue *Robert Stewart* or *Patrik Halero*, his Maiestie will hear of good sporte. I haue *Andro Martine*, quhome I mynd, quhen I find occasioun be Sea, to fend him to be examined be your lo. of his Maties most honourable PRIUE COUNSALL. I haue caufit him subscryue his awin Depositione, vpoun the quhilk your lo. will get mater eneuche to gar him speak Scottis, giue he lyk to blot his maister to be the hounder out of his sone to do all that he hes done.

I cannot nor may not stop the Inhabitanes of this Toune from speiking with the Traitous, geving of thame meit and drink, making thame advertiffit quhat I am doing, and making daylie and nightlie advertifmentes of all that thay can aither heir or sie. I will intreat your lo. to mak me advertiffit, with diligence, of THE COUNSELS mynd quhat I fall do to thame, both men and wemen? I have takin nyne or ten men of Birsay, quho was with *Robert*, and was platters with him in this REBELLIOUNE, and speciall keiparis of the Hous of Birsay, quhom I mynd to put to ane Assyse; and giue thay be convict, to hang thame, for ane exemple to vthers.

My lord, this seruice is not lyk to have so haistie ane end as I would. Your lo. knawis my Commissioun grantit to me is no longer than two moneth; of the quhilkis thair is fyue weikis and more outgone: And, giue it will pleas your lo. of his Maiesties Priue Counsell hould me heir, till it pleas God that I putt ane finall end to this mischante REBELLIOUNE, I would haue ane new Commissioun, with all priuilege neidfull, to¹ the seruice be endit; for I protest to God I neur, nor nevir fall, cum to ane cuntrie that may be compairitt in falsett to this cuntrie people! I vse thame both with lenitie and fair formes, as *the Bischope* will informe your lo.; and for all pat I can do, thay haue thair secret moyen and traffeche with the Traitous. And as for *Mr Johne Finlayfoune*,² thair is no remaneing heir to him, giue³ I wer once oute of this cuntrie; for man, wyffe, and bairne haits him to the deathe. Thay haue myntit⁴ twyse to kill him, since his comeing heir with me, war not I;⁵ bot now, feing thay sie me to tak plaine pairte with him, thay ar begune to behauld him.

Since the beginning of this Letter, I haue stayit to wryte to your lo., hoping evir vpoun better news. The Bark and poist came heir the twentie twa or tuentie thrie,⁶ with all permissioun necessar for the seruice: And efter thair arryvall, I sent to thame in the Castell, if thay wold cum out and put thamefelffis in HIS MAIESTEIS will, *simpliciter*, I wald lett thame cum out.

The penult of this instante, it hes pleasit God, of his mercie, to end this seruice in my hands. The Hous is myne, *Robert* in my hands, and all cumed to me except *Patrik Halero*, quhom as yit I haue not seine. All is cumed to his Maties honour, praisit be God. I haue sex flaine to me; many hurte. The fouldier I wraite was hurte is dead. I will assure your lo. it is one of the strongest Houlls in Breitan; for I will bring with me to your lo. cannone billetes, both brokkin lyk goulfe balls vpoun the Castelle, and clovin in twa halfis. I could not till now enter withe extremitie with the followars of *Robert*, till I was maister of the Hous, for fear of making more adoe, feing the Hous was so strong; bot now I fall not be slaw to puneisch seuirlye, to mak exemple to vthers to play the lyk. Presentlie, I am going to drink his Maties good healthe vpoun the Castell heid. *Mr Johne Finlayfoune* would haue the Castle in keiping, bot I will not till I heir from HIS MA^{TIE} and your lo., feing it hes coste his Matie so deare, and I and myne the dangeour of our lyffes. I will not geiue it him quho so beistlie gaiue it ouer for four schote of muscate. Always,⁷ quhat your lo^s of his Maties Priue Counsell will command me, vpone your advertifment, I will follow, and geiue the Hous to quhome your lo^s pleas.

¹ Until. ² The Sheriff Depute, whose oppressive cruelties made him to be detested by the inhabitants of Orkney. ³ If. ⁴ Attempted; aimed. ⁵ Had it not been for me. ⁶ The 22d or 23d of September.

⁷ Nevertheless.

I am to expeid the Bark and Pinnage to your lo. with all diligence, and this day to discharge the Capitane, Officers, and soldiars, the last of this moneth.

My lord, by your lo. good caire of me, it hes pleasit his Maiestie to graunte me ane Remissionne, and, to honour me of that I am vnworthie, to prefer me to be one of his Maties most honourable Priue Counsell. I cannot say more bot this much, I fall preise to my deathe to stryue, withe invye, for loyaltie and obedience; and hopes in my Saviour to do his Matie more better seruice nor this, or then to die; for I protest to God, I craue no grittir honour in this earthe then, by my death in his Maties seruice, my treuth and loyaltie may be knawin at my end.

As to your lo. manifold good will, and prouises I haue euir had of your lo. fauour, vmeritit be me, your lo. fall haue this assurance of me, I fall euir be your lo^s, and¹ ye fall neur speak or do any thing to me bot as ane trew and faithfull seruand to his Matie, and one pat fall euir please, so far as lysis in me, to be anfuerable to his Maties lawis. Thus, crauing your lo. pardone that I am so longsum,² I most humblie tak my leue, committing your lo. to the tuitioun of the Almychtie; and I fall euir rest and remaine

Your lo. euir bund to serue yo^r lo.

[CAITHNES.]

AT KIRKWALL CASTELL, the laste of September, 1614.

QUIAT cair and quhat panes and haifard I haue beine in since my coming heir, I will remitt to vthers to declair; bot befor it had not proceedit as it hath done, I rather I had bene buried heir. I assure your lo. the Cannonar hes don his dewtie in this seruice.

(13.) LETTER, *the Earl of Caithness* to THE KING.³

PLEIS YOUR MOST SACARED MAIESTIE,

I HAIFE taikine this boldnes to wryt thir lynes, sins it pleist your most grauius Maiestie to honour me so far as to mak schose of me before many thousandis of your subiectis of grytter vourthe, and of more vailloure and visdome then I, to vndergo this seruice of THE ORCADS, quhiche, praisit be to God, is endit now. This last of September, the Castell is in my handis. The REBELLIS for the most pairt taikin, to dispoone vpon at your Maiesteis plefoure; and all the countray maid pessabille. And now, I haif no more ado heire, bot to do vther directionis, gifine me be directionis and command, be your Maiesteis most honorabille Counsell. And quhan I haife maide ane accunt to thame, conforme to my imployment, I mynd, if it wille pleis your Maiestie that I cum to sow, to haife that honour as ane kife of your Maiesteis most grauius hand; houping in God to do your Maiestie more exspectabille seruice then this, and⁴ euer your Maiestie haif ado, or thene to lose my lyfe; for I protest to God, I craife no grytter honour in this eird nor to die in your Maiesteis seruice, that be my end your Maiestie may knaw my effectiounne and trouthe. Thus, most humblie talking my liue, my seruice euer remembered, I end, committing your Maiestie to the tuitioun of the Almyhtie. I fall euer remane

Your Maiesteis most humbille and obedient deuoted seruand, to the deithe,

KIRKUALLE CASTLE, the 1 October, 1614.

CAITHNES.

(14.) LETTER, *the Bishop of Orkney to Lord Binning, Secretary of State.*

(" Rescued 15 Oct. 1614.)⁵

RIGHT HONOURABLE MY VERY GOOD LORD,

IT wes nather of cairelesnes, negligence, nor oblauiounne, that my lord and I did not wryte so frequentlie; bot our instante cair and diligence to bring the seruice to sum happie end, did hauld ws from wryting, till we did sie the expectit fruit of labours, which we knewe wauld not be vnpleasing to HIS MA^{TIE} and your honouris. I hoip my Letters with the last poist, *James Gairdner*, and *Robert Winrame*, relative to the former, fall prevent thir and geiue satisfactiounne to your lo. in all anent the end-

¹ If.

² Prolix; tedious.

³ From the Original, *Denmylne MS. Collections*, Adv. Lib.

⁴ If.

⁵ From Copy, preserved in *Denmylne Coll.* of MSS. Adv. Library.

ing of this actionne, quhairin thair is nothing promesit nor done, quhilk is not agreable to his Maties pleafour and your lo. defyre. *Robert (Stewart)* and *Patrick Halero*, ar transportit this day to be exhibite to your lo. The rest ar keipit priffonars in the Castle; and my lord and I (efter that *Roberte* and *Patrik Halero* be dispatchit with *Yung May*,¹ and ane fufficient number of hable men to guaird thame) ar presentlie going to examine euirie one; and the nixt day, God willing, thay fall suffer judgement and condigne puneifment. The winds, hailes, fuaws, raines, ar so extraordinarie in thir places, that all had bene done and accomplieffed befor this day, giue² it had bene possible. *Andro Martine*, quho was sent with *Robert Winrahame*, would be weill examined be your lo. I hoipe to cum by THE BAND itself, quhair of I sent the coppie with his Depositionnes. Thair is one *Margaret Bicchane*,³ spous to *Simeone Stewart*, and now Adulteres to *Patrik Halero*, quho hes revealit and confessit to me more then any other. If your lo. think that hir Depositionnes or prefence falbe necessar, direct me, and it fall be obeyit; for I purpose to put hir oute of this cuntrie, for hir Adulterie. Anent the Articles sent in my last Letters to your lo., I beseik you to advyse, and advertteis. And since your lo. hes geuin me affurance of the passing of my rightes, (for the quhilkes I fall euir be cairfull to expres my thankfulnes, in all dewtie and seruice,) I fall be disposed at your lo. pleafour, either to come South with the *Earle*, or stay heir a litle efter, for my awin buffines, or ony seruice fall be committit or commandit to me. As for other things, your lo. will knaw thame be my Letters writin to my *Lord Theasurar*. So praying God euir to fauour, prosper, and preferue your lo., I rest

Your lo. awin affured and obliged in all dewtie,

KIRK WALL, 6 Oct., 1614.

[JA. B. OF ORCADS.]

(15.) LETTER, the *Earl of Caithness* to *Lord Binning*.⁴

("Reffaued 15 Oct. 1614.")

MY MOST SPECIALL GOOD LORD,

I RESSAUIT your Letter, datit at Edinburgh the twentie, &c. and cam in my handis the fourte of October. Befor the reffett of your lo. Letter, I wrait greit lenth of the hail proceedingis heir, and of the ending of this seruice that God of his mercy hes maid to come, vtherways nor any man expectit. My lord, war not I vsed the mater so cannelie,⁵ and maid *Patrik Halero* to faill thame that was thair in the Castell, it wald haue bene ane longsum saidge; for I protest to God the Hous hes neuir bene biggit by⁶ the consente of the Diuil; for it is one of the strongest houlds in Britane, without fellow. I fie be HIS MATIES Letter direct vnto your lo^s of his intentione to *Robert Stewart*, quhilk I thank God I haue nather send to him, bot this, and vpoune that condition he cam out: Quhilk conditione was in this forme, gif he wald come furth and put himself *simpliciter* in his Maties will, to dispone vpoune him at his Maties pleafour, I ould keip and preferue him from euerie danger of my folkis, till his Maties pleafour and will wer knawin. He defyrit that I wald promife vpoune my honour to preserve him, till I brocht him to his Matie. That I plainlie refusit; for I said I could not promeis that my selfe might haue acces to his Matie, without the speciall licence of the Lordis of his Maties most honourable PRIUIE COUNSELL. To conclud, he plainlie submittit him self to his Maties will. Bot befor he did this, *Patrick Halero* had left him, and said plainlie to him, in the Castle, 'he wald geiue it ouer.' Quhich maid him come out, vpoune the fairfaidis conditiones, and no vtherways. As I fall ansuer to God, *Robert Stewart* hes no farder of me; for I spak with him, and smellit that he wald neuir geiv over that Hous to be Torterit, and to be compellit to reveill vpoune his father, to be his wrak. I finding this, I defyrit, gif he wald let *Patrik Halero* cum oute and speik with me, vpoune that sam plaidge that was in for him. He plainlie refusit. I feing it so, I maid me to be weill contentit with his answeir, and said, 'I wald go fordwart with the sledge.' He past to the Castell; and in his companie I put in secrete woord to *Patrik Halero*, to fie giue the morne he wald

¹ Sinclair of May. ² If. *Denmylne MSS.* Adv. Library.

³ Buchanan. See her Deposition, Nov. 1, 1614.

⁵ Had not I handled (or managed) the matter so cautiously.

⁴ From a copy in
⁶ Without.

cum out and speik with me, in the Kirk, vpoune plaidges; quho grantit, and cam furth to me. And efter four houres conferens, he and I hand to hand, I maid him to 3eild, that he wald giue it ouer and mak the Hous to be in my handis, vpoune conditione I fould promise him his lyffe—quhilk I did. Then he willit me to caus ane *Minister* come in and preiche to thame, quhilk he fould (vse) meanis that the rest fould be contentit to heir; and so, he fould mak the mater so that he fould be out of suspitione, to¹ the grittest pairte of thame war out of the Castell; and as they cam out, to geiue thame fair countenance. And so, be thir meanis, *Patrik Halcro* maid the Hous and all these that war thair to be in my handis.

The Proceedingis and Ceremoneis tuik mekle of aucht dayes, quhilk was the occasioun that your lo. was so long of getting word; quhairfor I craue your guid lo. to haue me appardonit; for praisit be God, albeit the word hes bene long of comeing, it is good quhen it comes!

I luik pat my word and promiseis gevin to *Patrik Halcro* fall not be fulfillit. Befoir it wer, I rather be in my grave.² As to the rest I haue in my handis, except *Robert Stewart*, (they) falbe hinged within twa dayis at the Castell yett,³ with fundrie vtheris of the cuntrie men that war ring-leaders to *Robert*, to the exemple of vtheris. The number that fall hang, that was in the Castell, is twelue. I haue sent *Robert Stewart* and *Patrick Halcro* to CASTELL SINCLAIR, to be suirle keipit thair, till I haue done all that your lo. hes gevin me Commissioun: For now, since the seruice is done, I haue no pleafour to byd heir, for the wedder is both euill and varient, and so is the people; for he that wald rewle heir hes both neid of wit and manneheid, and manie earis and eis. Quhair your lo. willes me to conforme all my actionnes to his MAIESTIES mynd, I hoipe in my Sauour neur to do, say, nor think that fall be offensue to his Matie. Befoir, willingelie, I did any thing that war offensue to his Matie, I rather be buried quik. As to this peece of smalle seruice, I think it bot ane beginning; bot give his Matie haue ony seruice of grittar importance, I houpe ather to die, or giue his Matie ane grittar pruiſſe of my affectione and luife. Thanking your guid lo. for the grit cair your lo. hes had that I fould wante nothing that fould furdur this seruice, in my panes, I can render your lo. no farther than the assuurance and continuance of my seruice, as I fall euir remane,

Your awin

KIRKWALL, 7 Oct., 1614.

[CAITHNES.]

(16.) *The ARTICLES sent be THE ERLE OF CAITHNES to THE SECRETAR, to be resolved be THE COUNSALL.*

(" Reslaued 10 Oct. 1614.")

I. PLEAS your Honorable lo. to resolue and direct, quhat fall be done with the CASTELL, which is now in my custodie? Whither it falbe repaired or demolished? Thocht it be ane ornament for the towne of *Kirkwall*, and may be esteemed ane place of refuge and securitie for the holl cuntrie, in tyme of forrane Invasions, if any fould happin to be, zit since it is nather necessare for any ordinarie seruice of his Matie, nor ane Hous fitt for the habitation of his Maties Officiaris, and may be mor easlie takin be forrane foes, in cais they fould inueid, then recovered agane from them; I remit it to your lo. wifdome, to consider what falbe done with it.

II. Pleas your lo. to gine some directioun for gouernment of thir people. The present Officer, the *Shereff-deput*,⁴ is hated, to the death, be all fortis of men; is of no sufficient qualities for such a place and office; and by his former evill demanor, is so contemned of the basest, that he fall neur, by all apparence, recouer credit, authoritie, and regaird heir; zic,⁵ iff he remane heir after me, he is in danger of his lyff, and some new broyl may arryſe.

¹ Until.

² Such cold-blooded and perfidious treachery has seldom been equalled. A King's Lieutenant binding himself by the most solemn engagements to a Rebel on giving up a stronghold, without loss of blood, that a free pardon shall be granted to him—and yet, in his Dispatches, strenuously recommending that his pledge shall be recalled, and that the repentant Rebel shall be put to death, without mercy!

³ Gate.

⁴ Mr John

Finlaystone.

⁵ Yea.

III. Thocht ther be great spoyll and losse of horfe, cattell, scheip, boatis, and now of armour which belonged to HIS MA^{TIE}, your lo. wald be plesed to give direction quhat salbe done with that which remanis, and may be recovered from vniust detainers, that his MA^{TIE} be not defrauded and hurt.

IV. For BRSAY, which was the place whence the troubles did spring, your lo. may be pleased to consider, whither it salbe demolished or keiped, with some allowance; and be whome?

V. The Ordinance, which is in the Castell and 3eardis, in number 8 of brase and sax of irone, salbe, God willing, transported vpon the schippis, with all the armour whiche can be had.

VI. *Robert Stewart* and *Patrik Halcro* salbe keiped and brocht with my self.

CAITHNES.

(17.) LETTER, *Lord Binning* to his brother *Mr Patrick Hamilton*.¹

BROTHER,

THIS morning, *John Stewart* is arryued from *Orkney*; and hes broght in his ship, be direction of the *Erle of Caithnes*, foure of his Prisoneris, with thair Depositions; whom I have re-examined this forenone, and have send to yow the copies of thair Depositions sent from *Orkney*, and of my examination of thame this day; together with the copie of the Letter which the *Bisshop of Orkney* sent with thame. Thay ar now in the Towbuth, in the Irne-houfe,² becaus the Chancelar and Counfall will be in this Towne this night. I will advyse with thame, whether it be more fit to execute thame to-morrow, or to delay thair Execution for sum dayis, least thair suddane death might mak the detainers of the Castell of *Kirkwall* more desperat and obstinat.

THE ERLE OF CAITHNES, with great dexteritie, hes maid himself maister of the Steple and Howse of the Yairdis. He has no losse, prayfed be God, bot of two of his men slayne and ane hurt. We ar perswaded, that all the prouisions which thay requyre, be thair Letter, wer in *Orkney* before thair Letter came to my handis. I have this day sent to *Leith* two hundreth bullets for the canon and batard,³ and am provyding all vther necessars, which fall be reddie this night and imbarcked to-morrow, God willing, to the effect the ship make faile the morne, if God grant thame prosperous wind.

THIS I have thoght fit to wryte to yow, to be signified to HIS MA^{TIE} and my Lord Chamberlane; thinking that the copie of the *Bisshop's* Letter, and the prisoneris' Depositions, ar the best information I can giue yow.

I pray yow recommend to his Matie and my Lord Chamberlane the fauorable and spiedie expedition of the Erle of Caithnes and Bisshop of *Orkney's* buisnes; and vse all possible haist in the return of HIS MA^{TIES} commandments. So, in haist, I commit yow to God. ED^B, this 13. Sep. (1614.)

Your loving brother,

BINNING.

I HAVE send for the *Justice-depute* and *Justice-Clerk*, and aduerteised my Lord Chancelar, who came yesternight to *Pinkie*, and will be heir this efternone.

To my beloued brother, *Maister Patrik Hamilton*, at COURT.

III. (18) BAND OF ASSOCIATION SUBSCRIVIT BY THE REBELLIS IN ORKNAY.⁴

BE IT KEND till all men by thir presentis, Vs, the GENTLEMEN OF ORKNAY, after subscrivand: Forfameikle as, by the frequent intrantis of extraniers in this countrie, the estate of the commonwealth is in danger, and like to perishe, throw the corruption of the Lawes, partialitie of Judges, the greid of Officeris, and Oppression of Magistratis; quhilk dwanger⁵ the poor ones vnder the yock of servi-

¹ Mr Patrick Hamilton was the fourth son of Thomas Hamilton of Priestfield; and was appointed Under-Secretary of State to his brother. He usually resided at Court, for dispatch of Scottish affairs; and tended, in no small measure, towards elevating his brother's fortunes to the almost unprecedented station and offices which he successively held.

² The *Iron-house*, or *Cage* as it was termed, was constructed for the safer custody of desperate offenders, in the Tolbooth of Edinburgh, whence they were easily conducted to the Court-room, and to execution, without the danger of rescue.

³ Petard; battering piece.

⁴ From a collation of two Copies, preserved amongst the *Dennylne Coll. of MSS.* Adv. Library.

⁵ Dings, drives.

tude and flaverie; confuming his Maties rentis in their own adoes, but¹ vtilitie or good service to his Matie. QUHILK to prevent, by assistance of God, and favour of his most excellent Matie our Souerane Lord, We, be the faith and truth of our bodies, now touching the Evangel of our Saviour Jesus Christ, Bindis and Obleiffis vs, coniunctlie and seuerallie, as neid requires, to be in readines by our persons, with our sersandis, kin, freindis, and dependares, in armour, to repress all oppreffions and iniquities quhilk fall happin to be intendit aganis the commonwealth of this countrie, at any tyme hereafter; swa that better order may be establisched, whereby God eternalle may be pleased, and our Souerane lord obeyed and served, according to our dewty, in all respectis. And that this may be the better effectuat, WEE Bind and Obleiffe vs and our afoirfaidis, to concur, attend, and depend vpon ROBERT STEWART, sone naturall to our native Lord and Maister PATRIK ERLE OF ORKNAY, as our Heade and Commander, during the absence of his father, and to mentyne and defend him be our bodies, goodis, and geir, in execution of the premiffes, and all other lawfull actions and affaires quhilkis he shall have to do at any tyme hereafter, vnder the payne of Periurie and everlasting defame: BECAUSE the said Robert Stewart is reciproquallie bundin and obleift to vs, that he shall take no weightie matter in hand, without consent and assent of vs, at least any two of vs, under the same payne, BE this present, subscryved with our handis, as followis, At the day , the yeare of God Im. Vj^c. fourtene yeares.²

R. STEWARD.

PAT. GORDON, with my hand.

THOMAS LOWAT, to pe deit.

ROBERT MOWAT, with pe hart and handis.

JOHNE REID,³

R. SALETER, to pe dethe; Belie of Birsay.

WILLAME KERKTOUNE, to the dethe.

R. I., in Gersettar, to the dethe.

R. S., in Nissöhous, in Marwick, to pe dethe.

PA. HALCRO, to the deth.

THOMAS DOUGLAS, to death.

GILBERT GRAY, to pe deithe, with my hand.

WILLAME SINCLARE, to the dethe.

O. S., in Swrne, in Marwick, to the dethe.

O. Q., in Marwick, to pe dethe.

ROBERT GRAY, to the dethe.

T. ST., in Marwick, to the dethe.

IV. EXAMINATIONS AND DEPOSITIONS OF THE REBELS, &c.

(19.) DEPOSITION of *Duncan Mitchel*, ‘*Poist-boy in Edinburgh*.⁴

At Edinburgh, the fift day of July, 1614. In presence of the Lordes of Binning, Secretary, the President, Thesaurair-depute, Clerk of Regifler, Aduocat, Sir Alexander Drummond, and Sir Andro Ker.

DUNCANE MITCHELL, Poist in Edinburgh, sworne and examinat, deponis, that quhen the *Erll of Orkney* was caryed from this Towne towardis *Dunbartane*, the *Erll* directit the Depouner with a Letter to his sone *Robert*, who wes in *ORKNAY* for the tyme; and the depouner past with the Letter to *Orkney*, and delyverit the same to the said *Robert*, fra whome he ressauit ane ansuer, in wryte, to the *Erll*; and broght the same heir with him to this burgh of *Edinburgh*: And after he had stait heir twa dayis, he past with the Letter to *Dunbartane*, and delyuerit it to the *Erll*.

Deponis, quhen he delyverit the Letter to *Robert*, the said *Robert* wes in *Birsay*; and sayis, that he had a verball directionn and message from the *Erll* to *Robert*, that yf he had the *Houfe of Birsay* in his keeping, that he fould keepe the same to the *Erll*s vse; for the *Erll* saw litle apeirance of re-leif.⁵ And yf the *Houfe* were not in his keeping, that he fould vse the best meanes he could to come be it; and that he fould lift frome the Tennentis so much of thair mailles and dewyteis as he could gett; and that he fould keepe the *Houfe*, in maner foirfaid.

Deponis, when the depouner come to *Birsay*, *Barnard Steuartis* wyffe had the keeping of the

¹ Without. ² The various dates are not preserved in the copy of this Bond. It is asserted that no less than SEVEN HUNDRED persons signed it. See p. 289. ³ A rude attempt at the shape of a heart follows this person's subscription.

⁴ From a transcript preserved among the State Papers in *The Denmyhe Coll. of MSS.* Adv. Library. ⁵ From imprisonment.

Houfe, and that *Robert Stewart* had onlie fyve perfones with him in the Houfe: And the yett was kept, as the depouner thoght, be one of *Robertis* feruandis. And the depouner staid in *Birfay* fouretene nightis: And in the mean tyme of his being thair, *Robert* fend to *Kirkwall*, for some ma company, and for muscattis, poulder, and leade; and sayis that xvijj perfonis, or thairby, armed with muscattis, come to *Birfay*; and at thair comeing, thay then avowit the keeping of the Houfe; tooke and broght in some of *Barnard Steuartis* goodis to victuall the Houfe, and payit not for thame.

Deponis, that afor the depouner come away, *the Sheref-depute*, accompanyit with thre or fourefecoir perfonis, come and lay aboute the Houfe, and fend in Message to *Robert Steuart*, desyring him to come oute, and he wald gif him libertie for xiiij dayis to remayne in the cuntrey, to vplift the Tak-maillis¹ whilk he alledgeit wes dew to his fader, for auld byrunis:² And that *Robert* refuist to come furthe. Quhairupoun, *the Sheref* caufit charge the Houfe to be randerit; quhilk wes refuist be *Robert*, with found of trumpett, and discharge of some muscattis out of the Houfe. Lyke as, *the Sheref-depute* schoit in at the Houfe, with the schoit quhairof one Downye Lyell wes hurte. And the depouner staid bot ane night, after the Houfe was chargeit. And sayis, that *Robert* caufit prepar ane boit to transporte the depouner, be water, to *Caithnes*; and he fend with him a Letter to *the Erll*, and by tung bad him inquire, quhat *the Counsell* wes doing in his busynes—and quhat wes *the Erllis* will that the said *Robert* sould do in Orknay? Denyis, that he broght ony message from *Robert*, to ony perfonis within this burgh.

Deponis, that vpoun Thurisday, the last of Junij, aboute tua of the cloke in the efter noone, the depouner come to *Dunbartane*, and fand *the Erll* walking in the cloise; and he delyuerit *Robertis* Letter to *the Erll*. And when the depouner tauld *the Erll* that the Houfe of *Birfay* wes tane, *the Erll* anfuierit, ‘The Devill stik him! He might haif tane ane better Houfe!’ And forder, deponis, that *the Erll* said, ‘The Devill stik his foollis head!’ (meaneing be *Robert*), ‘He might haif mellit with *the Scheref-depute*—and yf he had maid him quyte of him, he wald haif had lesse ado!’ And forder, deponis, that *the Erll* said to him, Yf his sone had assailzeit *the Castell of Kirkwall*, the Keeparis thairof wald haif delyuerit the same to him, becaus they wer *the Erllis* auld feruandis! And deponis, that *the Erll* desyrit the depouner to commend him to those who assistit *Robert* in the Houfe. And sayis, that vpoun the morne *the Erll* caufit his man, *Shairp*, write ane Letter to his sone; whilk wes vnsubfcraynt be *the Erll*, and had no directioun on the bak. And the depouner reffaut lykewayes ane Letter from *Shairp* to *Robert Steuart*, without subfcription or directioun on the bak, faul onlie ane corse,³ that it might be knowne the other Letter. And quhen the depouner come away, *the Erll* desirit him to will *Robert* ‘to keepe the Houfe; and in no caise to rander the same: And, or⁴ he war tane, it wer better for him to dee with honnour—for he wald be putt in perpetuall warde, yf he wer tane!’ Deponis, that *the Erll* inquirit, ‘quhat fauour *Robert* had of the Commonis, and yf thay resortit vnto him?’ And desyrit *Robert* ‘to fend him money, of that quhilk he sould gett frome the Tak-men, for auld restis.’ And sayis, that naue wer present, quhen *the Erllis* Letter wes writtin, bot *the Erll*, his man *Shairp*, and the depouner.

DUNCANE MITCHELL.

(20.) COPIE of the Erle his Letter to his Sone.

(Appended to Duncan Mitchell's Deposition.)

ROBERT,

I HAVE red and considderit your Letter. Yow haue done verie weill in wrytting of your Letter in pe forme ze do; bot I feir it fall do littill goode. Alwayis,⁵ ze fall do the best with it, gif we haue ado with it; bot it may be we haue no thing ado with it; for thair is vper materis heir to think vpoun nor suche thingis, as that I beleive HIS MAIESTIE thinkis littill of theis materis. Tak tent that your Holy flasper betray zow not, as he did befoir. The berar sayis, ze gaif him bot sax pundis. Trewlie

¹ Rents of possessions let upon Lease.

² Arrears.

³ Cross or mark.

⁴ Ere; rather than.

⁵ Nevertheless.

it is littill aneugh to cum and go. Gif yow cum in this cuntrie vponie onie condition, *the Tolbuith* will be your best; ffor quhat condition heis promeist 3ow be onie in ORKNAY, thay bot skorne 3ow; ffor *the Counfall* will not kenne¹ quhat conditionn thay mak to 3ow. Seing 3e haue proceidit so far as 3ow have done, thair is no being heir for 3ow. War not² *Kinlevin* and *pe Bischop*, my Lord had not seine *Dumbartane*, at this tyme. This berar sayis, he will venture to fetche fuche money heir as yow will gif him; bot yow fend Joⁿ Prence with it; for heir he is ane honest man to 3ow. Tak his Band, and fend it with *pe beirar*, for that that 3ow delyuer vnto him; for my lord hes more than mistare³ of it. Restis, the last of Junij, 1614.

POSTSCRIPT. Caus gif the berar ane coitt,⁴ for he is wirthe⁵ it; and latt him haif his hail waidges; for I will haue nane to gif him, when he cumis heir. His wadges is fyftene pundis. Haist *pe berar* heir agane, for we will get no more silwer frome the Thesaurer. Lat him not stay xxiiij houris.

(21.) DEPOSITION of *Barnard Steuart*.⁶

AT EDINBURGHE, the xj of August, 1614. In presence of my Lordis Binning, President, The-saurer-depute, and Aduocat.

BARNARD STEUART, sworne and examinat, deponis, that *Robert Halcro of Cava* tauld to the depouner, that he saw a Letter directit be *the Erll of Orkney* to his sone *Robert*; quhairby, *the Erll* willit *Robert* to tak the depounaris lyffe. Demandit, yf he wes perswadit or delt with, be *the Erll*, to joyne with his sone *Robert*, in the present REBELLIOUN IN ORKNAY? Deponis, that he being informit that *the Erll* had gevin ane Commissioun to his sone *Robert*, to intromett with certane dewyteis of *Orkney*; the depouner past to *the Erll*, and demandit of him, yf he had gevin ony fuche Commissioun to *Robert*, becaus he feirit that *Robert*, vnder cullour of that Commissioun, wald mell with the depounaris geir? And that *the Erll* answert, 'Yf *Robert* be gone to *Orkney*, THE KING nor yow will be able to mend it—and it is your best to beholde him!'

The said *Barnard Steuart*, for explaining his former depositioun, deponis, that he haueing said to *the Erll*, that seeing *the Duke of Lennox* and *the Erll of Marr* had intreated HIS MAJESTIE in his fauour, that thairfoir, he had done verie happelie, in directing *Robert* to *Orkney*. And *the Erll*, seameing to be in a choler and anger at thir speecheis, thraving⁷ his bearde with his hand, said to the depouner, 'Yf *Robert* be gone to *Orkney*, THE KING and yow will not mend it—and your best wilbe to beholde him!'

The said *Barnard* being demandit, at quhat tyme he gatt knowlege of the Letter directit be *the Erll* to his sone *Robert*, to take the depounaris lyffe? Deponis, that after *Robert* had bene in *Birfay* fyftene dayis, and behavit him selfe somequhat civille; and thairefter, had maid him self, publiclie and be force, maister of *Birfay*, and expellit the depouner furthie thairof, and detenit his wyffe aganis hir will, the said *Barnard* directit *Robert Halcro of Cava* to perswade *Robert* to putt his wyffe to libertie; and after conference had be *Robert Halcro* with *Robert Steuart*, for that purpos, at *Robert Halcrois* bak-coming from *Birfa*, he declairit to the depouner, that *Robert Steuart* had thowne him a Letter of *the Erll of Orkneyis* to his sone, commanding him to tak the said *Barnardis* lyffe.

BARNARD STEUART.

(22.) DEPOSITIONS of *Thomas Black*, *Thomas Layng*, *Archibald Murray*, and *Alexander Leggatt*.

AT EDINBURGHE, the xijj day of September, 1614. In presence of the Lord Binning, Secretar.

THOMAS BLAK, borne in the Mernis, and one of the Baillies and Chalmerlaine to Patrik, laite Erll of *Orkney*, examinat, deponis, that quhen *Robert Steuart* tooke the Castell of *Kirkwall*, this depouner

¹ Recognise.

² Had it not been for the interference of Kinlevin and the Bishop, &c.

³ Necessity; need.

⁴ Coat.

⁵ Worthy; deserving.

⁶ From transcript in *Dennylne Coll. of MSS.* Adv. Library.

⁷ Twisting.

wes in the Steple of Kirkwall, and xii perfones with him. The faid Thomas, being desirrit to declair the simple treuthe of all his pairt in THE REBELLION OF ORKNAY, deponis, that, when Robert Steuart had tane the Houfe of Birfay, the Schereff past, and caufit the houfe to be randerit, quhilk wes refusit, and this depouner past with the Shereff to affist him, and broght with him twa hundreth men, and stayed ane night with the Shereff, and vpoun the morne the depouner come bak with the Shereff; and sayis, that aboute tuentie dayis thairefter *Robert Steuart* fend *Patrik Halcro* and *William Paterfoun* to the depouner, to will him to come to Robert, to mak and perfyte his comptis of the restis, whilkis he was awand to his fader;¹ and the depouner, according to thair desyre, past voluntarlie to *Robert*, to the *Place of Birfay*, and stayed thair with him ane night, and come bak agane to his awne houfe, and provydit xvij lb. to pay *Robert*, quhilk he caryed bak to him the next day. Quhilk all wes done after that the depouner had bene present with the Shereff and forceis of the cuntrey, at the chargeing of the faid Robert and his compliceis, to delyver to him, as his Mat^{ies} Commiffioner, the *Houfe of Birfay*, vnder the pane of Treffoun: And that the faid *Robert* had not onlie disobeyit the charge, but schoit some muscat shoitis at the Shereff and his company.

Thairefter the depouner come to the Steple of Kirkwall, the day befor the Castell wes affledgeit be *Robert*, and enterit thairin with *Patrik Halcro*, *Archibald Murray*, *Thomas Layng*, and some otheris, to the number of ten perfonis. And how sone *Robert* and his company come in fight of the Toun of Kirkwall, he caufit found his trumpettis, and the depounaris company, within the Steple, blew thair horne. And fa sone as *Robert* come and tooke the Castell, *Patrik Halcro*, *Archibald Murray*, and *Thome Laing* past oute of the Steple to *Robert*; and thair stayed onlie three or foure in the Steple with the depouner ane night or twa. And howsone the Castell wes affured in *Robertis* possessioun, he fend in some otheris to the depouner, and maid his number to be twelff perfonis, with whome the depouner kept the Steple till the *Erll of Caithnes* his comeing to Orkney. The depouner grantis that *Archibald Murray* and *Alexander Leggatt* wer at the taking of the *Castell*.

Deponis, that he agreit with the *Erll of Caithnes*, for him self, and in name of the rest of his companie, anent the randering of the steple; and he procurit leve of the Erll to carye out of the steple his victuallis, armour, and quhat els he had in the steple pertening to him self or his companie; and grantis that he wes Captane of the companie, being within the Stepill, and maid appointment with the Erll, in maner soirfaid. And declairis, that *Patrik Halcro*, *Archibald Murray*, *Gilbert Gray*, *Johnne Guild*, and *Andro Martine*, wer farrest vpoun *Robertis* counseill of ony in the haill companie. Grantis, that euery man within the Steple had a muscat, and thay had oulie fax pund of poulder amang thame. Grantis, that he boght some trunfcheour plaittis,² and ane pott, with some linning cloathe for thair furnishing in the Steple. And sayis, that *Robert* fend him in ane fedder bed. And the depouner had ane boy of his awne with him all this tyme.

THE faid THOMAS BLAK, being deiplie sworne, and demandit, yf he askit of *Robert*, quhat wes his purpois or drift in this REBELLION; or by what meanes he wald beare it oute? Deponis, he nevir askit any suche questioun of him. Grantis, that the *Erll of Caithnes* had the Steple maid fuir vnto him or³ it wes renderit; and that *Johnne Guild* had delt with the Erll in that mater. And this depouner, how soone the *Erll* fend vnto him, randerit and come furthe to him; and maid appointment, for him self and his fouldiouris, to rander the steple to the faid *Erll*; who, be his moyen, formarlie maid with *Johnne Guild*, had the Steple in his pouer, befor the depouner returnit vnto it.

Deponis, that thair was no bloode spilt be thame within the Steple, except that one of thame schoit *Robert Chalmers* through the hand, the tyme that the *Commiffair of Orkney* wes inclofit within the Place of the Yairdis: And the faid *Robert Chalmers* wes affisting the *Commiffair* in defence thair of.

THOMAS LAYNG, sworne and examinat, deponis, that, at his laite being in *England*, quhen he wes comeing home, *Thomas Davettie* gaif to the depouner tna Letteris, in *Skairlburgh*,⁴ to bring home to

¹ The arrears of rent, &c., which he was owing to his father.

² Trenchers.

³ Ere; before.

⁴ Scarborough.

the *Erll of Orknay*, quhich he delyuerit to the *Erll*. And deponis, that he being one of the Keeparis of the *Cassell of Kirkwall*, vnder *Sir James Steuart*, thair fell oute some difference and variance betuix the Shereff and the depouner, anent his pairt of the contentatioun¹ quhilk he fould haif had for taking of the *Pirott Schip*; wherupoun the deponar fled from the *Town of Kirkwall* to *Robert Steuart*, and stayit with him thair ten or tuelf days, befor his coming to *Kirkwall*. And the depouner wes with *Robert* quhen he come with displayit banner and trumpett to the *Bow-Croce*, accompanied with ane hundreth men in armes, or yairby.

Grantis, that he wes one of these who surprisit the Kirk and Steple of *Kirkwall*, and that he stayed in the Steple with *Patrik Halcro* and *Thomas Blak* tua dayis.

Grantis, that he wes with the Shereff quhen he chargeit *Robert* to rander the *House of Birfay*, quhilk *Robert* dissobeyit, and shoit some shoitis oute of the House at the Shereff. And grantis, that ane moneth efter this, the depouner past to *Robert Steuart*, and joyned with him.

Deponis, quhen the *Cassell* wes tane, the depouner wes in the Steple, and after the *Cassell* wes randerit to *Robert*, the depouner left the Steple and went to *Robert*, and remanit with him in the Place of the Yairdis, quhill the *Erll of Caithnes* come in the cuntrey. Deponis, that he accompanyit *Robert*, quhen *Robert*, with fyve hundreth men, went to the ffeildis aganis the *Erll of Caithnes*, his Maties Lieutenant; and that *Robert* mustert aganis the *Erll*, at the *Bal-ffield*, and vtheris pairtis about *Kirkwall*.

ARCHIBALD MURRAY, in *Birfay*, solemnelie sworne, and demandit, quhen he spak first with *Robert Steuart* after his coming to *Orknay*? Deponis, he spak first with him in *Kirkwall*, bot denyis that *Robert* impaired vnto him ony mater of this REBELLION at that tyme.

Deponis, that the interprise of the taking of the Castle and Steple of *Kirkwall* wes maid first in *Birfay*, and that *Patrik Halcro*, *Andro Martyne*, *Thomas Blak*, *Gilbert Gray*, *Alexander Leggatt*, *Thomas Layng*, and the depouner him self, wer all vpoun the conference, counsaill, and plott of the taking of the Castle and Steple of *Kirkwall*, and the mater wes plotted tuentie dayis afor it wes putt in executioun. And sayis, that *Robert Steuart* maid the depouner and the rest to vnderstand that his fader wes in missing, and oute of the *Cassell of Dunbartane*; and that he wes to come to *Orknay*, and sitt doun *Erll* agane. The beleif quhairof maid thame to follow *Robert* in his interpryffis.

Deponis, that *Alexander Leggatt* was with *Robert Steuart* the first time quhen the depouner mett with *Robert*; and that thair wes no speecheis betuix the depouner and *Robert*, bot chopping of handis at that tyme.

Demandit, yf thair wes ony purpois amangis thame in *Birfay* aganis the Shereff? Grantis, that *Robert Steuart*, *Patrik Halcro*, and *Thomas Blak*, had speecheis and conferance in *Birfay* anent the taking of the Shereffis lyffe; and when thay come to the Steple, the mater wes communicat to the depouner: And then *Thomas Blak* past frome it. And deponis, thay had shoit the Shereff in the Kirk at that tyme, yf he had not bene gangand with the *Commissair*.

Deponis, that quhen the Steple wes tane, the Keeparis held thame quiet quhill *Robert* come to the *Bow-Croce*; and then *Robert* foundit his trumpett, and they within the Steple blew ane horne; and the depouner stayed bot ane nicht in the steple. And sayis, that *Patrik Halcro* was commandair of the Steple quhen *Robert Chalmers* wes hurte: And efter that, *Thomas Blak* commandit within the Steple; and that *Thomas* assistit *Robert* in all fuche thingis as he commandit. And deponis, that the Steple wes fauld² be *Johnne Guild*, twa dayis befor it wes randerit be *Thomas Blak*.

Deponis, that after he left the Steple, he addrest him self to *Robert Steuart*, and stayed with him all the tyme, till within aucht dayis afor the *Erll of Caithnes* coming thair.

Deponis, that he wes with *Robert* at the persute and taking of the *Cassell*. And that the Shereff wes kept prisounair fyve dayes after he wes tane.

Grantis, that he was commandit be *Robert* to go to *Birfay* and to keepe the *House*, whilk he did;

¹ Remuneration; salvage.

² Sold; betrayed.

and kept the same till *the Erll of Caithnes* come and caufit charge the Houfe; quhilk charge the depouner obeyit, and come to *the Erll*.

Deponis, that *Williame Guddell* come furthe of the Castell, and randerit him felf to *the Erll of Caithnes* the day befor the depouner wes fend from Orknay; and that it is commounlie reportit that the faid *Williame* affermis, that *Patrik Halcro* hes *the Erll of Orknayis* Warrant for taking *the Castill* of Kirkwall.

ALEXANDER LEGGATT, fernand to *Patrik* sometyme *Erll of Orknay*, fworne, and demandit, how foone he fpak with Robert Steuart after his comeing to Orknay? Deponis, he fpak not with him quhill tuentie dayis after he come to Orknay.

Grantis, that he wes in this cuntrey at Beltane laft, and that he mett twyfe with *the Erll of Orknay*, and fpak with him and his fone Robert in the Castell of Edinburgh. He denyis that *the Erll* or his fone *Robert* had ony conference with the depouner anent THE REBELLION IN ORKNEY.

Denyis, that he was in *Birfay* with *Robert* quhen the Houfe wes chargeit.

Grantis, that he wes with *Robert* tuentie dayis afair *Robert* tooke *the Castill*; and that he wes with *Robert* quhen he mustherit at the *Bow-Croce*.

Deponis, how foone the Castell wes tane, the depouner stayit with *Robert Steuart* in *the Place of the Yairdis*, quhill he hard of *the Erle of Caithnes* comeing.

Grantis, that he wes with *Robert* quhen *Robert* mustherit at the Caiones, afair *the Erll of Caithnes* landit; and that he wes in *the Yairdis* quhen *Robert* mustherit at the Bal-fieild aganis *the Erll of Caithnes*; and that the depouner had the charge of the keeping of *the Place of the Yairdis* fouretene dayis.

Deponis, that he come furthe afair the cannoun shoite, being desirrit be *the Erll of Caithnes* to come furthe afair the shoiting of the cannoun. And the depouner randerit *the Place of the Yairdis* to *the Erll*.

Deponis, that *Robert Steuart*, fone to *Alexander Steuart of Flatt*, had the principall charge of the keeping of the faid Houfe, and that thay wer aboute the number of fourty men, appointit be *Robert Steuart*, bafe son to *the Erll*, to keep the Houfe to his behoofe.

ALEXANDER LEGGATT re-examinat, and deeplie fworne, and demandit, vpoun quhat occasioun he went to *the Erll*, quhen he mett with him in the Castell of Edinburgh, about Beltane laft? Deponis, that he being in warde, and haueing ane pensiou of victuall and filuer of *the Erll*, he past to *the Erll*, and desyrit of him ane precept and warrant to the Chalmerlanis or Takkifinen to mak him payment of the biganes¹ of his pensiou. And that *the Erll* refuist to gif ane precept, and said, he fould 'gif directioun to his fone Robert to anfuwer him.' And *Robert* tauld to the depouner, that he had ane directioun frome his fader in the depouneris favour.

Deponis, that *Thomas Blak*, *Archie Murray*, *Robert Schlaitter*, *Gilbert Gray*, and *Robert Mowatt of Gersfettair*, were most familiar with *Robert Steuart*, and farrest vponne his secreitis.

Deponis, that *Duncane Mitchell*, the poist, caryed Letteris from *Robert Steuart*, efter the taking of *Birfay*, to *the Erll* his fader.

Demandit, quhat Gentilmen of the cuntrey come voluntarilie in to *Robert*, after the taking of *the Castill*? Deponis, that nomberis of people of all rankis come in to him, as namelie, *the Laird of Halcro*, *Frances Mudie*, *the Laird of Grymfayis* fone; and deponis, that *Frances Mudie* said to *Robert*, that xxiiij Rebellis wald mak five hundreth men. The depouner knawis nocht yf thir men come in to *Robert* to assist him in his REBELLION; bot thay eate and drank with him. Deponis, that *George Traill* furneist sheep to *Robert*.

THOMAS BLAK, re-examinat, and deiplic fworne, deponis, that efter *the Sherreff* had been at *Birfay*, and gevin charge to *Robert Steuart* to delyuer the Houfe, the depouner being in companie with *the Sherreff*; that the depouner resortit findrie tymes to *Birfay* to *Robert*, and past and come at his pleafour.

Deponis, that he knawis no thing of *Thomas Layng* or *Alexander Leggatt*, concerning thair coun-

¹ Bygones; arrears.

faill gevin to *Robert Stewart*; bot the depouner suspectis that *Archibald Murray* wes familiar and preuie¹ with him.

THOMAS LAYNG, re-examinat, and sworne, deponis, that the tyme that he wes in *the Steple*, he wes kept aganis his will be *Thomas Blak* and his companye; and deponis, that all these who joyned *Robert*, outhier² subferyvit, or, yf thay could not subferyve, fwoir to die and leive with *Robert*. And *Thomas Blak* wes one of these who subferyvit; and the depouner hard the Roll red, wherin the subferyvaris wer contenit, whose names wer *Thomas Blak*, *Gilbert Gray*, *Johne Reid*, *Andro Martine*, and some vtheris whome he remembers not.

Deponis, that after the first taking of *the Steple*, *Patrik Halero* wes Capitane; and when *the Castell* wes tane, *Thomas Blak* wes Capitane; and that the haill company, that come from *Birfay* to tak *the Steple*, come freelie and willinglie for that earand; and that thair wes no violence or force vfit aganis ony of thame to compell thame to go to that earand; and the depouner come all the way fra *Birfay* to *the Steple*, and saw no man forceit be the way.

Deponis, that he hard that *Pettie³ Murray*, who went in the Ship with *the Shereff* and the depouner to *Orknay*, caryed ane Letter frome the Erll to his sone, *Robert*, being in *Birfay*.

Thomas Blak, re-examinat, and demandit, yf he knawis that *Robert Stewart* tooke ane Band or Oathe of these who joyned with him, that thay fould die and live with him? Deponis, that he knawis no fuche thing.

Thairefter, the said *Thomas* grantis, that he subferyuit the Band to die and live with *Robert*, and that these who could not subferyve did fweir vpoun thair fwerdis; and that the effect of their Band and Oathe wes, that thay fould esauldlie⁴ tak pairt with *Robert*, and die and live in the caus. And that *Patrik Halero*, *Gilbert Gray*, *Johne* and *Patrik Gordoun*, *Johne Guild*, and the depouner, with *Andro Martine*, subferyvit the Band. And rememberis not yf *Alexander Leggat* subferyuit the Band.

The depouner knawis not quhat Gentilmen of the cuntrey affisit *Robert* with poulder, bullett, victuallis, or counfaillis.

Deponis, that *Johne Guild* and *Patrik Traill* wer the takaris of *the Kingis Herauld*, being accompanyt with a nomber of thair affociatis; and the depouner come furthe of *the Steple* with his company to *the Place of the Yairdis*, and did freindship to *the Herauld*.

ARCHIBALD MURRAY, re-examinat, and demandit, yf he wes sworne be *Robert* to affist him? Deponis, that *Robert* vrgeit no fuche Oathe of the depouner, becaus he wes his faderis auld feruand, and knew that he neidit not to tak ony fuche Oathe of him. And grantis, that he tooke the subfcriptionis and oathis of vtheris, who wer not his faderis auld feruandis.

Denyis, that thair wes ony violence or force vfit aganis *Thomas Blak*, in his going to *the Steple*; bot that *Thomas* wes als fordwart, and past als willinglie thair, as ony of the companie.

THOMAS LAYNG, re-examinat, grantis that *Robert Stewart*, being informit be some who saw *the Herauld* going to the Croce, that he wes to mak some Proclamatioun or chargeis, the depouner hard *Robert Stewart* gif directioun to some of the fouldiouris in *the Castell* and *Steple*, as namelie, *Johne Guild*, to go and tak *the Herauld*, and not suffer him vse his Letteris and charges; and that conforme thairto, *Johne Guild* tooke him, and brought him in to the Place of the Yairdis; and the depouner hard that *Johne Guild* tooke him be the Coate of Armes, and preast to haif tane it af him; bot he knawis not yf the Coat wes revin.⁵

ALEXANDER LEGGATT, re-examinat, deponis, that *Thomas Blak* and his fouldiouris wer the takaris of *the Herauld*; and the depouner hard *Robert Stewart* gif directioun to the fouldiouris, to go and stay *the Herauld* fra vfeing of his Letteris and chargeis, and to bring him in to *the Place*; whilk directioun wes peremit be *Thomas Blak* and *Johne Guild*.

¹ Privy; in his confidence. ² Either. ³ *Patie*; Patrick. ⁴ Sincerely; heartily. *Efsauld*, or *aesauld*, literally one-fold; upright, without duplicity. A double and deceitful character was then termed *twa-fauld*. ⁵ Torn

Denyis, that he subferyuit or faw the Band; bot knawis that thair wes ane Band subferyuit, and Oathis gevin to die and live with *Robert* in the caus; and fuche as could not subferyve the Band, patt thair markis to it.

(23.) ANDRO MAIRTENIS *Confessioun*.

AT KIRKWALL, the xiiij day of September, 1614, I, ANDRO MAIRTINE, being examined be my Lord Liutennent,¹ and my Lord Bifchope of Orknay,² anent my intelligence of the causis quhy *Robert Stewart*, sone naturall to *Patrik Erle of Orknay*, come to Orknay in this last fomer?—Be quhais directione he came heir?—And for quhat purpose?—Hes anfuered as followis:

FIRST, that quhen I spak with him in Birsay, he schew to me ane Commiffioun, subferyuit be his father, to mak compt with all the Tak-men of the cuntrie, and reffauie payments of all restis,³ and debitis justlie awand to his father be thame, of the crope sex hundreth and ten (1610), and all yeiris preceding the comeing of my Lord Bifchope to Orknay; with powar also to medle and intromett with all his father's bestiall and moveables, and to dispone thairon. I speirit gif he had ony vther thing ado?—and he said, 'Yis'—bot he wald not tell me. ITEM, I saw ane Letter that came frae his father to him, be *Patrik Murray*, beirar, haueand this claufe in it—'That gif he sped not weill heir, that he sould addres himself to Murkle, to remane quhill tyme seruit better;' bot I remember not of the rest of the contentes. ITEM, anent any conditione betuixt him and *Patrik Halero*, throw his fatheris directione, I am na way vpoune that secreet; bot it appeiris thair be sum wrettin conditione amangs thame; becaus I saw gritt anger, with a fear betuixt thame, for wanting of ane Letter that was a missing among hands, and *Patrik* fend out ane boy to the Toune to mak inquisitione for it; bot qubither thay gat it or not, I knaw not. And I saw thame ryue⁴ my Lords subfcriptione from ane Letter, and thay caist the body of it in the fyre, and kept the subfcriptione. ITEM, about the . . . day of September efter, as the Cannone was twyfe schott in the night at the yrne yett, it patt ane greit feir in thair hartes. Then *Robert* speirit at me on the morne, quhat I thoelt of it? And I said, that 'all was lyk to go wrong.'—'This is a fair matter,' said he, (speikand of his father,) 'thair was neur thing lukkit weill yit quhilk he devyfit—God gif I had neur kend his turnis!' ITEM, quhan the commounaris wer trauelland for peax, I advyfit *Robert* to offer cautione for his personal comperance befor the *Lordis of Counsell*, gif the *Lieutennant* wald geife him libertie to go to Edinburgh. He anfuert to me, and said, that 'he wald not do so—for the Counsell wold vse him with Tortouris, quhill he reveillit his fatheris interesse in this mater—and that wold he neur doe!' Heirvpoun, I collectit, that all quhilk this yung man hes done, wes be the counsell of his father; quhilk is a great pitie, except it pleas God and his Matie to be mercifull to him. And as for my being with him, I wold neur haue bene a nycht in his companie, giue I could haue had meit and drink any vther way, as all the cuntrie knawis quhat necessitie and miserie I was reductit vnto, be pouertie. ITEM, I remember that a great number of this cuntrie men hundit him till folies, and maid ANE BAND of Concurrence and Assistance to him, quhilk he causit me to wryte; and a gritt number subferyuit the same, quhen I was not with him; bot the contents of the Band and subfcriptiones ar in his awin keiping, and my memorie cannot serue me to remember on the particulars; bot the writt will declaire.

A. MARTYNE.

(24.) DEPOSITIONS of *JOHNE BURNE*, *laying feik and like to die; taikin vp by JAMES, BISCHOP OF ORKNAY, in the said Johne his chalmer, vpon the thrid of October, 1614.*

IMPRIMIS, the said *JOHNE* deponit and confest, that the EARLE OF ORKNAY sent him over with

¹ George, Earl of Caithness. ² James Law, formerly Minister of Kirkliston, was promoted to the See of Orkney, in anno 1606; where he remained till he was translated to Glasgow, 1616. ³ Arrears. ⁴ Tear.

his sone *Robert*, to assist him to collect and receave some debtis resting vnpayed by diuerse Takismen of the crop 1609 and 1610 yeares; and promised to allow him ane Thousand markis therof, for his fies. SECONDLY, when he askit of the said *Earle*, 'Why he would send the said *Robert* to ORKNAY, seing he wes ane young man who appeirandlie wald trouble the countrie?' Deponit, that the *Earle* answered, that 'it was not ane matter to him to know'—and that he wold 'heare other newes or it wes long!' THIRDLY, being asked, yf he knew any direction given by the said *Earle* to *Robert* for taking of the Houses and introumetting with the Rentis? Deponit, that he saw ane Letter wes broght from the *Earle* be *Patrik Murray* in Kirkwall, in the quhilk the said *Earle* wrote to *Robert*, that 'yf he and *Patrik Halero* could not at that tyme find opportunity to take the Houses, that they should go over quietlie to *Murkell*, and remayne ther vntill they fand fitt tyme and occasion, and all thingis wer made readye for talking of the saidis Houffis. FERDLIE, being asked, why *Robert*, at his first coming to *Kirkwall*, did not take the Castle, seing, by his own confession, he might have had it deliuered vnto him be the souldiers? Answerit, that it was becaufe he thought not the tyme fitt; and thingis wer not prepared.

JOHNE BURNE. JA. B. OF ORCADS.

RO. COLTART, Notar publict, witnes.

(25.) DEPOSITION of ANDRO MARTINE, *servitor to the Earl of Orkney*.

AT EDINBURGH, the tent day of October, 1614. In presence of my Lordis Secretair, *Preuie Seale*, *Thefaurair depute*, and *Aduocat*.

ANDRO MARTINE, seruitour to *Patrik*, sometyme *Erll of Orknay*, demandit, who wryte that copie of ane Band, whilk wes presentit and showne vnto him? Deponis, that he acknawlegeis the Band to be his awin hand-wryte.

Demandit, quhair and quhen the Band wes subferyvit? Deponis, that he knowis no thing of the subferyveing thairof.

The said *Andro*, being examinat vpoun his grite and solemne oathe, and demandit, who wryte the principall Band? Deponis, that, in his opinioun, he thinkis that he write the principall Band, quhair-of the copie wes producet.

Demandit, yf he subferyuit the Band? Denyis the subferyveing thairof, or that he wes present quhen ony manne subferyvit it.

Demandit, yf he saw ony mannis subscription at the Band? Denyis, that evir he saw the Band vnfauldit, at ony tyme, sen he wryte it; and he saw no manis subscription at it.

Grantis, that *Robert Stewart*, bafe sone to the *Erll*, tauld to the depouner, that *Gilbert Gray* and *Robert Mowatt* subferyuit the Band, and that *Robert Sclaitter*, *Baillie of Birsay*, markit the Band.

Denyis, that he hard or saw ony man sweir that they could keepe the conditiounis of the Band.

Demandit, quhair he saw the Letteris that *Patrik Murray* broght from the the *Erll* to his sone *Robert*? Grantis, that he saw it in *Birsay*, in the hinder-end of July last.

Demandit, quhat conference he had with *Robert* anent that Letter? Deponis, he hard *Robert* say in ane anger, that he wald not go to the *Laird of Muirkill*, as he wes desir't be the Letteris, bot that he wald remane in the countrey.

Demandit, yf he saw *Robert Stewart* and *Patrik Halero* ryve the subscription from ane Letter of the *Erll of Orknayis*? Deponis, that he saw thame ryve it in the *Custell of Kirkwall*, the day after the *Erll of Caithnes* had tane the *Place of the Yairdis*. And grantis, that thay wer in a grite anger, for ane other Letter of the *Erlis* that wes in missing; and that thay send ane boy oute of the Castell to *Margaret Buquhananis* house to seeke the Letter; bot the depounair knawis not yf thay gatt the Letter. And the depouner knawis not quhat wes the contentis of the Letter quhairfra the subscriptione wes revin.

Deponis, that the boy, who wes fend for the Letter, wes towed¹ over *the Castell wall* be the deponer, and that he come back agane; bot the depouner knawis not yf he gatt the Letter.

Demandit, vpoun quhat hoipis *Robert* held *the Castell*; and by quhat meanis he thocht to worke his releiff? Deponis, that the depouner being weyreit in *the Castell*, and desyrous to be oute of it, becaus he mislykit the purpois, he write ane Letter, with² one *Paterfon*, to *William Bellenden*, craving his advyse and counsell quhat he fould do; to whome *William Bellendene* fend anfuwer, desyryng the depouner to come oute, by what meanis he could best. And the depouner having imported this to *Robert Stewart*, and craving libertie of him to go oute, becaus he could serve him, for no purpois, within the Houfe; at the first, *Robert* dissuadit him to go oute, for feir of *the Erll of Caithnes* crueltie: And the depouner haiving said to *Robert*, that ‘this interprise wes not lyke to frame weele;’—*Robert* anfuwerit, that ‘thay wald be able aneughe to halde oute, ffor mony alterationis wald occur, quhairby thay might keepe *the Castell*, as namelie, *the coming of THE SPANZEIRDIS, the practises of PAPISTS*, and the trouble whairin *THE COUNT PALLATYNE* wes:’ Quhilkis alterationis wald procure thame releif, as *Robert* said to the depouner.

Demandit, who of the cuntrey people steirit vp *Robert* and assistit him in this *Rebellion*? Depones, that *Gilbert Gray, Robert Mowatt, Robert Schwitter, Baillie of Birfay*, *William Sinclair of Lye, Gilbert Grayis* sone, and his goode-sone *Gerfetter*,³ wer the principallis who steirit him vp.

Demandit, quhat conference he had with *Alexander Leggatt* concerning ony direction he brocht frome *the Erll* to his sone *Robert*? Deponis, that he rememberis not quhat conference wes betuix thame thairanent.

Demandit, yf he wes in *Birfay* when *Robert Stewart* fend Letteris to his fader with *Duncane Mitchell*, the poist? Grantis, that he wes in *Birfay* at that tyme; and that the depouner, be *Robertis* direction and information, write ane Letter, in his name, to *the Erll* his fader; quhilk Letter *Robert* rave;⁴ and wryte over ane Letter him self. Deponis, that the contentis of the Letter written be the depouner wes, to tell *the Erll*, that *Robert* wes come to *Orknay* to tak vp his debtis; and that he wes troublit be *the Sheriff*, and forseit to leave the *Toun of Kirkwall*—and that he had tane him self to *Birfay*—and that *the Sherfff* had conuenit the cuntrey, and come to *Birfay* and persewit him; and had hurte ane man, and slayn ane doig in at the windois; bot he wes myndit to hald oute aganis *the Sherfff*.

The depouner denyis that he knew the contentis of the Letter written be *Robert* him self to *the Erll*.

(26.) ANDRO MARTINIS *Letter to the Secretar.*

MY LORD,

SINCE your lo. examined me so fickerlie vpoun my intelligence concerning the grund of *THE REBELLIOUNE* begun in *ORKNAY* be *Robert Stewart* and *Patrik Halero*, and gart me fwear to be plaine, your lo. will excuse me that forget this: Quhen *Robert* and I was in conference, on a tyme, he said, that ‘Gif his father had bene willing, and vfit the counsell of vtheris, quhen he was in *Edinburgh Castle*, he might haue cund away; for thair was men anew offerit to haue cumd or sente men with him to *Orknay*; bot he wold not cum away, becaus he durste not brek waird.’ I fpeirit ‘How many he might haue gottin to haue cumd with him?’ He anfuwerit, ‘Four or fyne Thowfand, giue⁵ he had pleaisit.’ Bot he tauld me not quhat men thay war. Of this I thocht good to mak your lo. aduertisment, for saiftie of my aithe; and hopes that your lo. will interceid for me, pat, be his Ma^{ties} clemencie, I may be remittit for being with *Robert* in companie, at this vnhappie tyme of miserie; I beand aged and depauperat, able⁶ to die of hungar, giue I had not gottin helpe be him in meit and drink. Bot I nevir buire airmes, maid musters, nor watched against *HIS MA^{ties} Lieutenant*, efter I hard of his purpose. This I referre to your lo. gud discretioun; and gif ony vther thingis fall cum to my memorie,

¹ Let down by a tow, or rope.

² By.

³ Robert Mowatt. See p. 299, &c.

⁴ Tore.

⁵ If.

⁶ Lat. *habilis*.

quhillkis ar omittit at the present, I fall aquent your lo. thairwith. He said also, that quhen they spak with *Sir James Connell*,¹ that *Sir James* wiffit him felfe to be at hame, and *the Erle of Orkney* to haue bein in Orkney, to do for thame felues; the ane in the West, and the vther in the North. So, confending in HIS MA^{TIES} elemencie, and your lo. affectioun toward me, I rest, &c.

EDINBURGHIE, in waired, the tent of October, 1614.

(27.) THE DEPOSITIONS of MARGARITE BUCHANAN, taken vp the first day of November, 1614, before *Johne Sincler of Ratter, James, Bishop of Orkney, and Johne Buchanan*.

FIRST, the said *Margarite* depones and confessis, that *Patrik Halcro* had ane coffer standing in his motheris ehalmere, in Kirkwall. SECOUNDLIE, deponis and confessis, that, vpon the Sondag efter that *the Erle of Cathenes* come to the Yairdis in Kirkwall, the said *Patrik* sent downe to hir the key of the said coffer, and desired hir to bring vnto him the writtis and Letters whilk wer lockit vp in the same, of whilk writtis thee had ane Warrant of *the Erle of Orkney*, whereof none did knaw but him felf. THIRDIE, thee deponit and confess, that when thee had receaved the key of the said coffer, thee went and openeid the same, and fand two writtis only in the same, whilk thee red presentlie, and baith of them were subseribed by the Earle of Orkney. FOURTLIE, deponit and confess, that the ane of them wes ane BAND and WARRANT for the said *Patrik*, for to take and keipe THE CASTLE OF KIRK WALL, wherfoever he might most convenientlie; allowing vnto him therefore, the double of the allowance quhillk the Constables and Keipar of the Castle had ordinarlie of before. FIFTLIE, deponit and confess, that the other writt contened the names of sic as should be associatis and assisteris vnto him in the said interprise; as namelie, *Thomas Laing, Alexander Legatt, Helias Kneland*, and vthers whose names thee can not remember. SEXTLIE, deponit, and confess, that presentlie after thee had red and considered these two Writtis, thee broght them, hir self, to the Castell, and delivered them to *Patrik Halcro* out of hir owne hand. SEVENTLIE, deponit, that when *Patrik* had red the said BAND, he gave it in like manner to *Robert Stewart* to reid; who, after that he had red itt, rave² it with his handis in small peices, and trampitt it vnder his feitt. AUGHTLIE, deponit, that *Patrik Halcro* wes not content with the ryving³ of it, as she perceaved by his countenance and gestur; and when thee sayed vnto Robert, ‘Fye vpon yow, Sir! Why hawe yee done that? It had bene better to have keipte it!’ Deponit, that baith *Robert* and *Patrik* said, ‘that that BAND should not do hurte in tyme coming’—and that ‘*The Earle of Orkney* should not want his head for it!’ NYNTLIE, Deponet, that *Patrik Halcro* was reiding the other writt, wherein the names wer contened, when *Robert* rave the Band—and that thee knawes not certanlie what became of that writt; but that, in hir indgement, it wes riven⁴ also.

JA. B. of Orcads, J. SINCLER of Ratter, JOHNE BUCANANE.

THEIR former Depositions were writtin be me, *Robert Stewart*, Minister at Hoy, at direction of *James B. of Orkney*.
ROBERT STEWART, Minister, with my hand.

(28.) DEPOSITION of JOHN SHARPE, *servant to the Earle of Orkney*.

AT EDINBURGH, the first of November, 1614, in presence of my Lordes Chancellor, Secretar, Preisdent, Preue Seall, Theasaurar depute, Clerk of Regifter, and Aduocat.

JOHNE SHARPE, servand to the *Earle of Orkney*, sworne, and demanded when he entered in seruice with the said Earle? Depones, that he entered in seruice with him in the moneth of Junij, or Julij, 1613.

Demanded, what he knowes concerning THE REBELLIOUN in ORKNAY? Depones, that he remembers that within sex weeks after he come to the *Earle*, the *Earle* caused the deponer write a Me-

¹ *Sir James Makoneill*. See his Trial, III. 1, &c.

² Tore.

³ Tearing.

⁴ Torn.

moriall in thir tearmes, 'Yow shal go to Orkney; yow shal fett Takkes, and reule the countrey, as yow did before. Yow shal fend shippes to Norraway, for such thinges as yow misfer,¹ especiallie, for poulder.' And this Memoriall wes wrotten in *the Casfile of Dunbartane*. Depones, that *Robert Stewart*, the Earles bafe sone, wes not in Dunbartane when this Memoriall wes wrotten, but came there within xiiijth dayes thereafter. Depones, that *the Earle* patt this Memoriall in his pocquett; and the deponer neuer saw it thereafter. And knows not what come of it. And faves, that this Memoriall wes wrotten by my Lordes own dyteing.²

Depones, that thereafter, when my lord wes in *the Casfile of Edinburgh*, the deponer, by my lordes dyteing, wrote a new Memorandum, agreeable in substance to the former; with this addition, 'Yow shal put furth of the countrey of Orknay, suche as hes no thing to do in it.'

Demanded, yf he hard ony conference betuix *the Earle* and *Robert* anent THE REBELLION IN ORKNAY? Depones, that he hes hard *the Earle* findrye tymes invey againes *Roberte*, for geveing over the Houfe of Kirkwall to *the Bischope of Orknay*, calling him 'a feeble beast!' And he hard *Robert* say, 'Yf he had the Houfe againe, he wald keep it better!' And *the Earle* answered, that 'he trowed he wald do no better.' And he hes findrie tymes hard *the Earle* defyre *Robert* to 'prove a prettie³ manne yf the Houfe come againe in his handis; ffor it wald stand him to his lyff!'

Depones, that after *Robert* went to Orknay, the deponer wrotte a new Memorandum, by *the Earles* dytment, to *Robert*, bidding him choose new Takmen,⁴ and tak vp his restes.⁵ And the remanent of this Memorandum, in substance, wes agreeable to the former Memorandums. And this Memorandum wes wrotten in *the Casfile of Edinburgh*.

Thereafter, when *Robert* wes gone to Orknay, the deponer, by *the Earles* dyteing, wrote a Missive from *the Earle* to his sone *Robert*, oute of *the Casfile of Edinburgh*, willing him to follow his Memoriall, in all thinges. And depones, that *the Earle* wold not subscryue this Letter, for fear of interception by the way; and the direction, on the bak of the Letter, wes in thir wordes—'For *Robert*.'

Depones, there wes a vther Letter written by the deponer for *the Earle*, in the tyme of his beeing in *Edinburgh Casfile*, bearing, 'Yow shal speak the countrey menne, and try yf thay will tak your pairte; and yf the countrey men will tak your pairte, yow shal reter your self to Caitlines, and stay there, and proceede no thing whill I send yow worde.' And depones, that *Duncane Mitchell*, the Poast, caryed the one of thir Letteres, and *Patrik Murray* caryed the other Letter: And that this last Letter wes not subscryued, wanted date, and had direction one the bak, 'For *Robert*.' And all thir Letters and Memorandums were dyted by my Lord him selue.

Denyes that euer he hade conference or speatche with *Robert* anent the REBELLION. Depones, that *the Earle* had copies of all the Memorandums and Letters wrotten be him, and keepd thame in his pocquett.

Depones, that *Duncane Mitchell*, the Poast, broght a Letter from *Robert* oute of Orknay to *the Earle*, beareing, 'It will please your lo. to tell *the Counsell* in my name, that I am come to Orknay, and am going thorroughe the countrey to tak vp your lo. debtes; and that I wes perfewed by *the Shiref*, and wes constrained, for saulfetye of my lyff, to tak *the Place of Birsay* for my refudge.' The deponer is of oppinion, that this Letter wes wrotten for an excufe of *Robertes* proceedings.

Depones, that *the Earle* caused wrote a Letter to *Robert*, in the deponeres owne name, thoweing *Robert*, that 'yf he come in this countrey, he wold be hanged.'

Denyes that he hard ony speatche betuix *the Earle* and *Mitchell*, the Poast, when he broght *Robertis* Letteres to him.

Demanded, who wer present, at the wroteing of *the Earles* last Letteres send with *Mitchell*, the

¹ Want; stand in need of.

² Enditing; dictation.

³ Gallant; brave.

⁴ That is, to recall the

whole of the Leases granted by the Bishop or other administrators under the new regime; and to give the Lands to new tenants, who would be subservient to the Earl.

⁵ Arrears of rent.

Poast? Depones, that none were present but *the Earle* and the deponer. And that *Mitchell*, the Poast, stooode by but hard nothing.

Depones, that *Mitchell*, the Poast, tauld the deponar, that *Robert* had taken BIRSAÿ; and that one *Mudye* come from Kirkwall to Birsay with *Robert*; and that one *Gray* assisted *Robert* in keeping of the Houfe; and that *the Shiref* come and perfewed the Howse; and that there was shooteing in and shooteing oute; and that one *Downy Lyell* wes hurt, and one *Doig* slayne.

Depones fordar, that after *the Guard* come to seek the deponer, *the Earle* derected the deponer to Orkney; and bad him awaite vpon his sone, and do as he wold command him. And the deponer, asking of *the Earle*, yf he wold wrote a Letter with him, *the Earle* answered, that 'he wold not wrotte, for he feared the deponer wold be taken by the way;' and he saide forder to the deponer, that *Robert* wold not let him want.

JOHN SHARPE.

(29.) DEPOSITION of ROBERT STEWART, 'base sone' to the Earl of Orkney.

AT EDINBURGH, the xiiij day of Nouember, 1614. In presence of my Lord Chancellour, the Erl of Caithnes, the Lordis Secretair, Preuie Seale, Thefaurair depute, and Aduocat.

ROBERT STEUART, base sone to *Patrik Erll of Orkney*, humblit on his knees, and deiplie sworne; and demandit, vpoun quhat occasioun, and by whose instigatioun he maid THE REBELLION IN ORKNAY? Deponis, that he being in grite neede and necessitie, and vnable to keepe this Toun for dett, he past to Orkney to tak vp some of his faderis auld restis, quhairwith he thoght to mak his furnishing oute of this cuntrey. Depones, that his fader haueing confauet ane grite offence aganis him, becaus that he, at the first taking of *the Castell of Kirkwall*, randerit the same bak agane to *the Bischop*; his fader, for that caus, wald skairlie kenne¹ him, or gif him ony maintenance. And deponis, that his fader directit him to Orkney, with Commissioun to mell² with his restis, and to intromett with his goodis in the cuntrey; and that his fader advist and counfallit him to repair the oursight and wrang he had committit by deliuering of the Castell to *the Bischop*; and if by ony meanes he could come be this Castell, to tak it agane. And deponis, that his fader gaif him some Memorialis, in wryte, quhilkis wer writtin be the depouner him self, to his faderis directioun; and the Memorialis boore, that yf *the Castell* come in his handis, he sould send a Schip to *Norroway*, for poulder, bullett, and fuche other necessar prouisioun as wer fitte for keeping of the Houfe.

Grantis, that in this tyme of his being in Orkney, he ressauit tua or three Letteris from his fader; whairof one wes delyuerit to the depouner be *Patrik Murray*, the contentis whairof wes, that he wes informit *the Houfe of Birsay* wes tane; and he advist the depouner, yf he wes not able to keepe the Houfe, that he sould reter him self with *Patrik Halcro* to Caithnes.

Grantis, that he ressauit ane other Letter from his fader, send with *Duncane Mitchell*, the Poist, and that the substance of that Letter wes, for taking and keeping of the Houffes, yf the depouner could come be thame.

Grantis, that his fader, findrie tymes, said to him, that he wald eschaip oute of warde, and come to Orkney.

Deponis, that he acquentit not *Patrik Halcro* with his intentioun to tak *the Castell*, quhill *the Shereff* perfewit the depouner at *Birsay*. And grantis, that at that tyme he commvnicat to *Patrik Halcro* the contentis of his faderis Letter send to him with *Duncane Mitchell*, the Poist; and that *Patrik* willinglie yeildit to joyne with him in this REBELLION.

Denyis, that *Patrik Halcro* ressauit any Letteris fra the depounaris fader.

Deponis, that his fader vsed all the meenis he could to haif gottin money, to haif send with the depouner to Orkney, to haif furneist him in thingis necessar for this interprise; bot he could gett nane.

Grantis, that he write to his fader with *Duncane Mitchell*, the Poist, schaweing how the Schereff

¹ Recognise; countenance.

² Literally, meddle; uplift the arrears of rent, &c.

had procedit aganis him in perfute of him at *Birfay*, and quhat had fallen oute amang thame in that actioun.

Demandit, what hoipis he had of assistance frome ony cuntrie people heir? Deponis, he had no hoipis of assistance from this cuntrey people.

Deponis, that his fader verie oft, in publict audience, wald invey aganis the depouner, and quarrell him for randeriug of *the Castell* to *the Bischop*.

R. STEWART.

(30.) DEPOSITION of PATRICK HALCRO.

PATRIK HALCRO solemnelie sworne and demandit, quhat he knawis concerning the beginning of THE REBELLIOUN IN ORKNAY? Deponis, that in Somer, bigane a year, the depouner past to *Dunbartane* to visite *the Erle of Orknay*; and that *the Erle*, in a priuat conference betuix thame twa, askit of the depouner, 'Yff, be ony meanes, he could come be his Houffis agane in Orknay?' To whome the depouner ansuerit, 'Your lo. hes been over lang in starting. Your lo. had done weele, yf yow had caufit keepe thame better, quhen your lo. had thame!' And the Erll replyit, 'That can not now be mendit. Is it not yitt possible to gett the Houffis agane?' And the depouner ansuerit, 'It wilbe hard for your lo. to gett that done, vnles your lo. haif assuairance of the cuntrey people to stand be yow and assist yow.' And then the Erll said, 'Thay ar a companie of fals people, I can not lippin¹ in one of thame; bot I mynd to fend my sone thair, quha wilbe your pairt. Will yow assist and tak pairt with my sone?' And the depouner at the first planelie refuist to follow his sone in that earand, saying, 'he wes over feble a Capitane to follow, in fuche a purpos!' Bot the Erle haveing delt forder with him, to follow his sone at his comeing to Orknay, the depouner, in end, promiseit to follow him, and to tak parte with him at his comeing to Orknay.

Deponis, that after *Robert* come to Orknay, he shew to the depouner, in *Birfay*, the Letter writtin be *the Erll* his fader to him; willing him, yf he wes not able to keepe the Houfe of *Birfay*, to reteir him with the depouner to *Caithnes*. And grantis, that at that same tyme he promiseit his assistance to *Robert*, and to tak pairt with him.

Grantis, that according to ane other Memoriall, directit be *the Erll* to *Robert*, for sending to *Nor-roway* for poulder, they fend ane ship to *Noroway* for poulder, bot the *Castell* was randerit or the poulder come home: And the depounair heiris that threescoir barrellis of this poulder come in *the Erll of Cathnis* handis.

Deponis, that at the first playing of the cannoun, *Robert* being in his bed, the depouner come to him, and askit of him 'quhy he wes lyand in his bed, seing the cannoun had dischargit fax schoit?' And he demandit of *Robert*, 'How he thocht this mater wald lest?' And tauld him, 'he wald not be able to hald oute. It wer gude for him to tak him to the Sea!' To whome *Robert* ansuerit, 'I will not tak me to the Sea; my fader will then say, I haif feblie gevin ouer his Houfe! I will rather hald oute quhill the Houfe be dung downe abone my heade, or² I rander my self to *the Erll of Caithnes*, or yitt to *the Counsell*, to be tortourit, quhill³ I confes aganis my fader, the thing that may be his wrack and myne!'

Deponis, that *Robert* said to the depouner, that 'his fader wald come to the cuntrey, and thay wer n expectatioun that *the Erll* wald brek warde.'

P. HALCRO.

[*Mr Alexander Coluile, Justice-Depute.*]

Resetting of Egyptians—'Johnnie Faw.'

Jan. 25.—WILLIAME AUCHTERLONY of Cairny.

Dilaitit for contraveniug the Actis of Parliament in resetting of Egiptianis;

¹ Rely; trust.

² Before; ere.

³ Until.

ſpeciallie of Johnne Fall,¹ ane notorious Egiptian and Chiftane of that vnhappy foirt² of people.

Mr James Oliphant, Aduocat, ſubſtitute to Sir Willame Oliphant, his father, Aduocat to our ſouerane lord, producet the Letteris deulie execute, &c.—Compeirit Dauid Lyndſay of Balgaweis, *excufatorio nomine* for the ſaid Willame, and declairit that the ſaid Willame was lyand bedfaſt and deidlie feik, nocht habill to travell to keip this dyet, and offerit him ſelff caution for the ſaid Willame his compeirance, befor my Lord Juſtice, the thrid day of the nixt Juſtice-air of the Sheref dome quhairin he duellis, or ſoner, vpon fyftene dayis wairning.—Quhilk excuſe the Juſtice, with conſent of the perſewar, admittit, &c.

Rebellion in Orkney—Tyranny and Oppreſſion—High Treason, &c.

[PATRICK EARL OF ORKNEY, the infatuated and ambitious individual, whoſe guilty life at length terminated ignominiouſly upon the ſcaffold, was nearly related to King James VI., and at one period ſtood high in favour with his prince. As the particulars of the crimes for which his life was forfeited to the offended Laws of his country are rehearſed in his former Trial,³ and in that of his natural ſon, ROBERT STEWART,⁴ reference is made to theſe Caſes, and to the illuſtrative Papers appended to them. The various Hiſtories of Scotland may alſo be conſulted, in which the fact of THE REBELLION IN ORKNEY is very briefly noticed, owing to the want of proper materials.

Although his crimes were of a very remarkable deſcription, and indicative of a cruel and blood-thirſty diſpoſition, it muſt not be ſuppoſed that this Nobleman was a rude and unpoliſhed barbarian, wholly unſkilled in the modes of civilized life. On the contrary, much of his earlier life had been ſpent at Court; and his daring crimes and overweening ambition alone prevented him from riſing to the high-eſt eminence, as a Courtier. Like many other unlucky Courtiers of that age, he ſeems to have been obſcured by the prevailing ſtar of that corrupt and worthleſs favourite, Kerr or Carr, Earl of Somerſet, who ſecretly undermined him, and embraced every opportunity of blaſting his character and fame, in the King's eſtimation. Having thus fallen into diſgrace at Court, the Earl of Orkney appears to have commenced a reckless warfare againſt all civilized ſociety, and to have formed the mad project of eſtabliſhing himſelf as an independent and deſpotic Prince, in his Iſland Kingdoms of Orkney and Shetland; and in due time he had alſo reſolved upon entirely ſhaking off the yoke of allegiance to the Crown of Scotland.

Having retired to Orkney, he committed ſuch exceſſes, that, within a very few years after the acceſſion of King James VI. to the Engliſh throne, the oppreſſed people of Orkney preſented numerous ſupplikations for redreſs, and loudly complained of their intolerable grievances. Theſe complaints were directed to the Privy Council, (who appear to have been unable to afford any formidable check to his deſpotic cruelty,) as well as to the King himſelf. Sharp remonſtrances were at firſt uſed, but with little effect; and at length the Earl's oppreſſions became ſo formidable in their character and degree, that the Lord Advocate found it neceſſary, in order to quiet the clamours of the people, to bring him to public Trial. Still, however, it appears to have been thought poſſible that he might be reclaimed; and the King uſed every means to delay matters coming to fatal extremities. Contrary to general expectation, the effects of long imprifonment ſeemed only to aggravate the rancour of his cruel diſpoſition. He employed all his time in meditating projects for his eſcape from confinement, ſo that he might wreſt

¹ The celebrated Johnnie 'Faw.'

² Claſs; ſociety.

³ Aug. 2, 1610, II. 81.

⁴ Jan. 5, 1615, III. 273.

his Castles out of the hands of the constituted authorities; and then boldly to defy the King and the Privy Council of Scotland, after having declared his independence of the kingdom of Great Britain.

The most effectual check which was given to these mad projects, was the sequestration of his revenues, and the withholding from the Earl all supplies, excepting such as were necessary for his bare maintenance, as a state prisoner. This rigorous step, however, appears to have been carried too far, and to have suggested to the Earl the idea of sending his 'bafe son,' Robert Stewart, to Orkney; where, after he had uplifted his 'bygone rents,' &c., he might secretly convey a considerable portion of them to him, to enable him to bribe his guards. When thus provided, he directed his son to use every endeavour to obtain possession of the Castle of Kirkwall, and of the other strengths formerly belonging to the Earl; leaving it to himself to effect his escape from Dumbarton Castle, to which he had been conveyed for greater security. So jealous were the Privy Council of the machinations of this restless and ambitious Nobleman, that after long petitioning, and causing him to endure great privations, it was not until Jan. 28, 1614, that they allowed him, out of his large revenues, the paltry aliment of '4 lib. Scotts per diem!'

Robert Stewart did, no doubt, succeed in his rash attempt; but in that he was mainly favoured by the accidental circumstance of the high unpopularity of the Sheriff; who, on account of his oppressive conduct and cruel exactions, was detested by the inhabitants so deeply, that, in order to get rid of his thralldom, they even consented to join 'the Bastard' in his treasonable schemes, judging, perhaps, that so long an imprisonment, and such severe discipline in the school of adversity, must necessarily have changed the temper and habits of their natural and rightful lord, whose return they were led by Robert confidently to expect. This feeling was very strongly marked in the 'Band of Affociation, subserived by the Rebellis in Orknay,' which is given in the Appendix. In that interesting document, 'the frequent entrantis of extraniers,'² 'the corruption of the Lawes, partialitie of Judges, the greid of officeris, and oppreffioun of Magiftratis,' are dwelt upon as intolerable grievances.

The expedition of GEORGE, *fifth* EARL OF CAITHNESS, the King's Lieutenant, eventually succeeded; and the ringleaders in the Rebellion, as has already been seen, were executed by that person, who, it will be remembered, had formerly rendered himself infamous by his treacherously delivering up his kinsman, *John Lord Maxwell*, to government, after having lured him to Castle-Sinclair, under the mask of friendship and protection.³ The reader will find, from Documents preserved in the Appendix, that the Earl of Caithness intruded himself into this Commission, by eagerly volunteering his services to the Privy Council, so as, if possible, to ingratiate himself with his Sovereign, by quelling a Rebellion which had excited the observation and alarm even of the Court of England.⁴ It is not a little interesting, among all his specious pretexes, to detect and expose the secret springs which appear to have actuated that selfish and cold-blooded Nobleman in undertaking so repulsive an expedition as that against the Rebels in Orkney. Under the mask of patriotism, zeal for his Majesty's honour, and his pretended desire for restoring the peace of the country, it is not difficult to discover the basest motives of hereditary and personal revenge and deadly feud against the fallen Earl of Orkney; as well as a secret design to procure the whole, or at least, a considerable portion, of his extensive territories, as a reward for his patriotic services. But a little research enables us to perceive, that a rooted hatred had long existed between the Earls of Caithness and Orkney, which had frequently broken out into open strife. As an extraordinary instance of the spirit of wanton cruelty and mischief in which these hostilities were

¹ *Balfour's Annals*, II. 50.

² The natives of Orkney, having long been accustomed to be judged by the laws of Denmark, were peculiarly offended at the introduction of *foreign* laws, judges, and settlers in their country, which was the policy too suddenly adopted by the Sheriff and other officers to *civilize* the people. So strongly did they resent these and the other aggressions of the *foreigners*, that they gladly forwarded the Bastard's views for the expulsion of their hated taskmasters.

³ See this Collection, Vol. III., 33, &c. *Gordon's Hist. of Sutherland*, p. 301.

⁴ THE EARL OF CAITHNESS got a pension of a thousand crowns for his services, and was, shortly after his return, made one of the Lords of the Privy Council of Scotland, and was in a fair way to realize all the objects of his ambition, had not his overreaching spirit led him into a train of iniquities which terminated in the ruin of himself and his family, which for many generations did not recover this shock.

carried on by the former, a quaint, but striking passage may be cited, from the graphic pen of Sir Robert Gordon;¹ who states, that in the year 1608, some of the Earl of Orkney's servants had been forced to land in the country of Caithness, 'by a contrarie wind and vehement storme of weather. First, *the Earle of Catteynes* maid them drunk; then, in a mocking iest, he caused sheave the one syd of their beards and one syd of their heads; last of all, he constreyned them to tak their welhell, and to goe to sea in that stormie tempest! The poor men, feareing his farther crueltie, did choyse rather to committ themselves to the mercie of the fenfeles elements and rageing waves of the sea, then abyd his furie. So they entered the stormie Seas of *Pentlay-Firth* (a fearfull and dangerous arme of Sea between *Catteynes* and *Orknay*), whence they escaped the furie thereof, by the providence and assistance of God, who had compassion on them, in this lamentable and desperat case, and directed ther course; so that they landed saiflie in *Orknay*. This affront and indignitie was highlie taken (not without iust reason) by *the Earle of Orknay*, who complained therof to THE KING and his *Counsell*. His MAIESTIE did write to *the Councill of Scotland* to punish *the Earle of Catteynes* severeilie, after dew tryall, as having committed a fact against his authoritie. But when both *the Earles of Catteynes* and *Orknay* came to Edinburghe, readie to informe one against another, they aggred all their privatt quarrells, by the mediation of freinds, *lest they should reveile too much of either's doings!* So this controversie was past over with silence; and some acknowledgement was maid by *the Earle of Catteynes* to *the Earle of Orknay*, as a satisfaction for abusing his servants,' &c.

The intriguing Earl of Caithness at length brought ruin upon himself and his family, by endeavouring 'to mak the Lord Forbes wearie of his landis in Catteynes.' This benevolent purpose he tried to effect by constant oppression of his tenants and servants, in virtue of his office of Sheriffship, which he had obtained from the Earl of Huntlie, on his marriage with Lady Jean Gordon, his sister. He secretly caused incendiaries burn all the corns standing in the corn yards of Sansett, in November 1615; and, to remove suspicion from himself, industriously rumoured abroad, that the Fire-raising had been done by Mackay's tenants, with whom the Forbeses were then at feud. The matter, however, having soon been disclosed by the actual perpetrators, the Earl was closely prosecuted; and he only obtained his Remission² after a long interval, 1st, By engaging to satisfy his numerous creditors; 2dly, by resigning into the King's hands the Sheriffship and Justiciary of Caithness; 3dly, by engaging to present to justice the malefactors whom he had employed to burn the corns; and, lastly, to resign to the Bishop of Caithness the House of Strabister, with certain Feu-lands of that Bishopric, amounting to the yearly value of 2000 merkis Scots, in augmentation of the Bishop's scanty revenues. His son, *Lord Berriedale*, was imprisoned for these debts for above five years; but the Earl himself obtained a '*superse-dere*,' or protection from legal 'diligence,' from the Privy Council. The creditors, however, 'apprized,' or sequestrated, all his lands. He was denounced Rebel in 1621, and his own son, Lord Berriedale, applied for and obtained a Commission to pursue his father! After five years' imprisonment, he was released for that purpose, on finding due caution to return to ward after having executed his Commission. In September 1623, Lord Berriedale and Sir Robert Gordon, the King's Commissioners, having taken the field against the Earl of Caithness, he precipitately fled to Orkney, intending to go thence to Norway and Denmark. Castle Sinclair, and his other Castles of Aerigell and Keasse, were immediately taken possession of in the King's name; and the Commissioners succeeded in pacifying the country of Caithness.

George, *fifth* Earl of Caithness, after having passed a miserable life, died, a victim of disappointed ambition, and in comparative obscurity, in Caithness, in the month of February, 1643, at the advanced age of 78.

¹ *Hist. of the Family of Sutherland*, p. 258. ² The author of the *History of King James the Sixth*, p. 391, says he became in the King's will, who decerned thus: to pay to the party offended 2000 merks; to renounce his pension of 1000 crowns; to renounce his Sheriffship; and that he 'sould caus the Bishop be ansuerit of his spirituall dewtie ther; and sould redres all quarrells and faultis to peax.'

But to return from this digression, the only person among the Rebels, whose life was saved, was PATRICK HALCRO. He had been instrumental in bringing about a surrender of the Castle of Kirkwall, and had proved the means of preventing much bloodshed, which otherwise must have been occasioned, had the Rebels persisted in their Treason.¹ The advisers of the Crown, therefore, recommended him as a fit object of mercy; and more especially on account of the terms which he had proposed to the King's Lieutenant, at the time of the surrender.

It has formerly been observed, in reference to THE EARL OF ORKNEY, that he had originally been in high favour with the King; and that, in point of exterior, he was a person of courtly manners and polished address. So anxious was the King for his release, that certain Lords of the Secret Council were empowered to offer him the keepership and profits of either of the Royal Palaces of Holyroodhouse, Linlithgow, Stirling, or Falkland, with Ten Thousand pounds of rent, on condition that he should renounce all right to the Earldom of Orkney, and resign the same in the King's hands. But so infatuated and blindly perverse was the Earl, and so intent was he on accomplishing the objects of his visionary ambition, that he absolutely refused these conditions; having, previously to that time, instructed his son to hazard the mad attempt for which they both forfeited their lives. An anonymous author,² already quoted, has given a most faithful and remarkable portrait of the princely habits and lavish expenditure of *Patrick Earl of Orkney*, when he resided in his own territories, surrounded by his vassals and dependents. His sketch cannot fail to be generally interesting. "He had a princelie and royall renewen; and indeid behavit himself ther with fik foueraintie, and geve³ I durst fay the playne veritie, rather tyranicallie, be the shaddow of Dence Lawis,⁴ different and more rigorous nor⁵ the Municipall or Criminall Lawis of the rest of Scotland; wherby, no man of rent or purfe mycht enjoy his propertie in Orknay, without his speciall favour; and the same deir boght. Wherby it followit, that fitchit and forgett faultis was so devyfit aganis manie of them, that they wer compellit, be emprefonment and finall reward, to resigne ther heritable tytlis unto him; and geve he had a fteve⁶ purfe and no rent, then was sum cryme devyfit aganis him, wherby he was compellit to lose ather half or haill therof, geve not lyff and all befyd! And his pomp was so great ther, as he went never from his Castell to the Kirk, nor abroad utherwayis, without the convoy of fiftie muscaters and uthir gentlemen of convoy and gaird. And siclyk, before denner and supper, ther wer thrie trumpetters that foundit still till the meat of the furst service was set at table; and siclyk, at the second service; and consequentlie, efter the grace. He had also his ships directit to the Sea, to intercept Pirats, and collect tribut of uncouth filbers,⁷ that came yearlie to these Seyis. Wherby he maid fik collection of gret gunnis and uthir weapons for weare, as no Hous, Palice, or Castell, yea all in Scotland wer not furneist with the lyk; and yit all this provisioun was spulzeit, in his awen tyme, be the violent hand of the Erle of Caithnes."

It only remains to the Editor to state, that this haughty Earl, according to *Archbishop Spotswood*,⁸ 'took his Sentence impatiently;' on which account, 'some Preachers were desired to confer with him, and to dispose his minde towards death. But they, finding him irrefolute, intreated for a delay of the Execution; which was granted to the sixth day of February. At which time, he was brought unto the Scaffold, guarded by the Magistrates of the City, and in the sight of many people beheaded.' *Calderwood*⁹ gives a fuller account of his death, in these terms. (Feb. 1, 1615.) 'PATRIK EARLE OF ORKNEY was arraigned in the Tolbooth of Edinburgh; and be ane Inqueist of the Nobles and Barrones, was convict of Treafone, for the late REBELLION IN ORKNAY. It was thought, that if he had not,

¹ *Sir Robert Gordon* says, 'This Patrik Hacro was afterward in great favour with Earle George (Caithness), and weill interteyned by him for this service.'—*Hist. of Sutherland*, p. 301.

² 'THE HISTORIE AND LIFE OF KING JAMES THE SIXT,' printed for the *Bannatyne Club*, 1825, Quarto, p. 386.

³ If.

⁴ Orkney was then governed by Danish Law, which was most iniquitously applied by the Earl and his deputies.

⁵ Thau.

⁶ Stiff; well fed.

⁷ Fishers who came from Holland and other foreign countries.

⁸ *Spotswood's Hist.*

⁹ *Cald. MS. Church Hist.* Advocate's Library.

20 dayes before, confessed, that he was the author of the said Rebellion, and come in the King's Will for the same, that hardly he could have been convicted, be any Law. The wifer and elder fort of the Nobilitie with-drew themselves from his Assise. He had sent to the Court to obtaine favour; but no appearance of returning ane answere. The Ministers, finding him soe ignorant, that he could skarle rehearse the Lord's prayer, intreated the Counsell to delay his Executione some few dayes, till he were better informed, and received the Lord's Supper. Their Petitione was assisted with the request of some Noblemen, and granted. Soe he communicate upon the Lord's day, the 5th of February; and was beheaded, at the Market-crosse of Edinburgh, upon Monday the 6 of Februar; when Sir Robert Ker, Earle of Rochester, was decourted. The King laid the blame of his death on him; but late, as his custome was, when matters was past remedie! It was observed that this moneth is fatall to the King's blood.

The reader is once more referred, for details, to the Appendix of ILLUSTRATIVE DOCUMENTS annexed to the Trial of ROBERT STEWART and others, Jan. 5, 1615; and to the Papers annexed to the present Trial.]

[*Dominus Willielmus Heart de Prestoun, miles Jusficiarius.*]

ASSESSOURIS TO THE JUSTICE.

ALEX ^R ERLE OF DUNFERMELING, Chancellor,	SIR JOHNNE COKBURNE of Ormestoun,
THOMAS LORD OF BYNNING, Secretar,	SIR ALEXANDER HAY of Quhitburgh,
MR JOHNNE PRESTOUN of Pennycuik, President,	SIR WILLIAME LEVINGSTOUN of Killithe,
SIR GEDIONE MURRAY of Elibank, Thesaurer-depute,	SIR ALEXANDER DRUMMOND of Meidhope;
SIR RICHARD COKBURNE of Clerkingtoun,	all SENATOURIS OF THE COLLEGE OF JUSTICE.

Feb. 1.—PATRIK ERLE of Orknay, &c.

Dilaitit, accuset, and persewit be Sir Williame Oliphant of Newtoun, kny^t, Aduocat to our souerane lord for his hienes intereis, of the seuerall crymes of Treasone and Lese-Maiestie, at lenth specifcit and set down in the Dittay following.

DITTAY against the Earl of Orkney.

PATRIK ERLE OF ORKNAY, &c. 3e ar Indytit and accuset, ffor samekill as, certane and sure information being gevin to our souerane lord, the Kingis most excellent Maiestie, and to pe Lordis of his hienes Previe Counfall of this Kingdome, of the manyfold Iniureis, Tyranneis, and haynous Oppressiones, practizet be 3ow vpon dyuerse his Maiesteis peceable and guid subiectis, duelland within the boundis of Orknay and 3eitland: Lyk as, for the better stay of the quhilkis, 3our former Tirranie and Oppressioun fra haifing forder course, and for the mair exact and substantiall tryell of 3our giltines pairof, 3e, be his Maiesteis speciall directioun, being committit to waird, within the Castell of Dumbarten, to haif remanit pairin, quhill ordour had bene tane with 3ow, as appertenit: IT is of verritie, that 3e, vpone occasioun of the restrante of 3our former libertie, freitting in 3our awin mynd pairat, nocht only during the tyme of 3our wairding, devyset all indirect and vnlawful meanis and moyane for 3our brek and escaipe furth of pe said waird, albeit skarrit and hindreit, throw the fidelitie of 3our keiperis fra doing pairof; bot lykwayis, maist treffoneabillie and vndewtfullie schaikand af 3our allegiance and dew obedience to our said souerane lord,

to quhais bountiefull clemencie 3e war fa gritlie bund, 3e maift treffonabillie plottit, devyfet, and concludit the lait treffonabill Rebellioun, Vproir, and Infurrectionioun, profecute and followit furth be 3our devyfe and directionioun within the faid cuntrie of Orknay; in fuafar as vmq^{le} Robert Stewart, 3our bafe fone, eftir mony thraitningis and minatorie fpeiches vtterit be 3ow aganis him, for his fimPLICITIE in randeriing and overgeving of his Maieftis Caftell of Kirkwall to James Bifchope of Orknay, quha than had Commiffioun of his Maieftie to command all Caftellis, Houffis, and ftrenthis within the boundis of Orknay and Zeitland, and quha, be vertew of the fame Commiffioun, acquyret poffeffioun of the faid Caftell of Kirkwall and remanent Houffis and Palices within the bounds aboue writtin: AS ALSO, eftir 3e faid Robert his reconciliatioun with 3ow agane, vpone conditionioun that he fould vndertak quhatfoeuer desperat courfe 3e fould command him to follow, off 3our fpeciall caufeing, fending, hounding out, command, counfell, devyfe, and only directionioun, quhome 3e alfo furneift with perticuler iniunctiones, fet down be 3ow in writ, how he fould carie and behave him felff in that 3our treffonabill intendit interpryfe, he, in the moneth of Maij, or pairby, laft-bypaft, paf furth of 3ir pairtis to 3e cuntrie of Orknay, and pair, haifing forgaderit with Patrik Halcro, quha alfo was fpeciallie imployit and directit be 3ow, to aid and affift him in that vnhappie buffines, and to quhome 3e gaif ane fecuritie, in writ, of certane landis, rowmes, and fteidingis, vpone conditionioun that he fould tak pairt with the faid Robert, 3our fone, pairintill: FIRST, accoirding to 3our directionioun with the affiftance of vmq^{le} Thomas Blak, Archibald Murray, Andro Mairtene, Thomas Layng, Alexander Legget, and dyuerfe vtheris pair rebellious affociatis, the Houfe and Place of Birlay was treffonabillie furpryfet and tane in be thame, &c.¹ THE making of the quhillk treffonabill Vproir and Rebellioun. within the faid cuntrie of Orknay; the Treffonabill Surpryfeing and taking in of the faid Place of Birlay, Place of the 3airdis, Caftell of Kirkwall, Kirk and Steiple pairof, and remanent his Maieftis Houffis within 3e faid cuntrie of Orknay, keiping and haldiing of the famyn, in maner foirfaid, and haill treffonable practizes following pairupoune, war haillilie plottit, devyfet, forget, and concludit be 3ow, and the famyn war maift treffonabillie put in executioun be the faid vmq^{le} Robert, 3our bafe fone, and his rebellious companie; off 3our fpeciall caufeing, fending, hounding out, airt, pairt-taking, counfall, devyfe, and only directionioun: LYK AS, dyuerfe Letteris and meffages paf betuix 3ow and 3e faid Robert, 3our fone, eftir 3our treffonabill taking of 3e faid Place of Birlay, incurrageing him pairby to keip the faidis Houffis, and to follow furth 3e ref of your iniunctiones gevin to him in that 3our treffonable interpryfe: LYK AS, 3e faid vmq^{le} Robert,

¹ Here the whole particulars of the treasonable transactions detailed in Robert Stewart's Trial are rehearsed, which it is unnecessary to repeat in this place. *Vid.* Jan. 5, 1615.

5our sone, and dyuerse vtheris his associatis, being examinat vpoun þe verritie of
 þe premisses, in presens of the Lordis of his Maiesteis Previe Counfall, be pair
 Depositiones, hes grantit and confessit, that þe said Rebellioun was first intendit¹
 be 5ow, and prosecute and followit furth be 5our speciall directioun and command,
 gevin to the said Robert, 5our sone, and Patrik Halcro, to aid and assist him
 pairintill: AND siclyk, be the Depositiones of James Lyoun, Johnne Scherp,
 Duncane Mitchell, the said Patrik Halcro, and dyuerse vtheris persones exami-
 nat in that matter, 5our giltines of the said Rebellioun is cleirlye verifeit and
 provin: LYK AS, the said vmq^{le} Robert, 5our sone, the day that he was accuset
 and persewit for the tressonabill crymes aboue writtin, befor he was presentit
 vpone pannell, being re-examinat, of new, in presens of dyuerse Lordis of his
 Maiesteis Previe Counfall, nocht only maist constantlie abaid at all his former De-
 positiones maid be him, concerning that Rebellioun, bot also eikit² pairto, that 5e
 gaif to him selff ane perticuler Warrant, in writt, to pas to the said interpryse,
 and to recover the said Castell agane vnder his power; as also, that 5e delyuerit
 to the said Patrik Halcro ane securitie, in writt, of certane landis and rowmes,
 vpone conditioun that he sould interpryse the recoverie of the said Castell,
 and assist Robert pairintill: Quhilkis Confessiones and Declarationes was also
 ratifeit and renewit be the said Robert, vpone pannell, in presens of the Justice
 and Assysouris afor his Convictioun, and vpone the scaffold, in presens of the
 haill people, immediatlie befor his executioun. LYK AS, the said Robert, 5our
 sone, and his associatis, was convict and execute to the daith, for the haill tresson-
 able crymes aboue specifreit, as done and committit of 5our speciall causeing, coun-
 fell, and directioun; as the proces of pair convictioun, heirwith producet, beiris.
 AND FINALLIE, 5our lordschipsis selff being presentit, vpone the tuelff day of
 Januar last, in presens of dyuerse Lordis of his Maiesteis maist honourabill Pre-
 vie Counfall of this kingdome, 5e pair, be 5our Deposition, subscryuit with 5our
 hand, acknowlegit and confessit the geving of the directioun be 5ow to 5our vmq^{le}
 sone Robert, and vtheris his associatis, for þe surpryseing, taking, and detening
 of the said Castell of Kirkwall, craveing God and his Maiesties pardoun for that
 5our offence, and in all humilitie and submissioun offerit 5our selff in his Maie-
 steis Will for þe samyn: As 5our Deposition, heirwith producet, mair cleirlye
 testifeis: QUHAIRIN, 5e, as the principall devyser, fortifiear, and steirar vp of þe
 said vmq^{le} Robert, 5our sone, to the practizeing of the former Rebellioun, hes
 committit oppin and manifest Tressone aganis our souerane lord, the Kingis most
 sacred Maiestie, and his royall authoritie: AND 5e ar airt, pairt, red, and coun-
 salour of the haill tressonabill practizes aboue writtin: ffor the quhilk, 5e aucht

¹ Contrived; purposed; set on foot.

² Added.

and fould be demanit¹ and puneist as ane Tratour; to the terrour and example of vtheris to abstene fra the lyk heireftir.

PERSEWAR, Sir Williame Oliphant of Newtoun, kny^t, Aduocat to our fouverane lord, for his hienes intereis.

PRELOCUTOURIS in defence,

Mr Alexander King, Mr Thomas Nicolfoun, Mr Alexander Peiblis, James King, Aduocattis.

Mr Alexander King, Aduocat, producet ane WARRANT of the Lordis of Se-creit Counsell, for himself and the remanent prelocutouris, to compeir this day, in defence of the Erle of Orknay, for the crymes contenit in his Dittay.—The foirfaisdis ASSESSOURIS, nominat to concur with the Justice in this proces, war fuorne: Aganis quhome na oppositioun was maid be the pannell: Quhairupoun my Lord Aduocat askit instrumentis.

My Lord Aduocat producet the DITTAY, and defyret proces aganis the pannell for the tressonable crymes thairin contenit.

The Dittay, be command of my Lord Justice and his Assessouris, being red, and the pannell accuset, be vertew thair of, of the feuerall poyntis of Tressone and Lefe-Maiestie thairintill, it is allegit, be my Lord of Orknay and his prelocutouris, that feing thair ar mony grit and haynous poyntis contenit in the Dittay, and that the samyn war nocht knawin quhill² now to the pannell, and na coppie thair of was gevin to him, quhairvpoun the pannell and his prelocutouris mycht haif consultit, quhilk aucht to haif bene done; defyret, thairfoir, ane tyme to be grantit to the saidis Prelocutouris, that thay mycht advyse with my Lord of Orknay thairupoun.—It is ansuerit, be my Lord Aduocat, that the pannell is brocht fra the Kingis Waird to the bar, and accuset of crymes committit aganis his Maiesteis autoritie, quhair of he is nawayis ignorant: Na coppie of his Dittay fould haif bene gevin to him, nor na delay fould be grantit, in Tryell thair of; bot, conforme to the daylie practik of this Judgement, quhair ane persone challenget and committit to waird for Tressone, and brocht to his Tryell, the Dittay quhairupoun he is accuset is summerlie discussit, without delay or continuatioun.—It is allegit be the pannell, that he was nocht wairdit for this cryme, specifeit in his Dittay, bot for vther crymes; and this Tressone, quhairupoun he is now dilait and accuset, is committit during the tyme of his imprissonement: And feing, the only caus quhy his prelocutouris craves this delay to be grantit, is allanerlie³ to confer with his lordschip, anent the verritie of the factis lybellit, quhidder he may plead giltie or innocent thair of: Defyres, as of befoir, ane convenient tyme to be grantit to thame to confer with the Erle thairupoun.

My Lord Aduocat takis instrumentis of the pannellis declaratioun, that he was wairdit for vther crymes; and that the crymes lybellit was committit sen his wairding: And as to the continuatioun cravat be his prelocutouris for ane

¹ Treated.

² Until.

³ Alone; only.

convenient space, na delay fould be grantit, in respect his lordschip can pretend na ignorance of the crymes contenit in his Dittay, feing he hes bene dyuerse tymes examinat thairupoun be the Lordis of Secreit Counfall, vpon the verritie thairof.

THE JUSTICE, with advyse of the Assessoris, Repellis the pannellis allegiance ; bot, *ex gratia*, Grantis ane half hour to the pannel and his prelocutouris to be advysit thairupoun.—Quhairupoun my Lord Aduocat askit instrumentis.

The pannel, with his prelocutouris, haifing ressaunt vp the Dittay, and remouet thame felfis apairt to the Counfall-hous to be advysit thairupoun, retournet within the space grantit to thame for that effect ; and Declairit, that thai wald nawayis impunge or dispute aganis the relevancie of the Dittay : And as to the verritie of the crymes contenit thairintill, speciallie the directiones allegit gevin to hes vni^q^{le} sone, Robert, to practize the Rebellioun lybellit, denyis any sic directioun : And gif any command may be inferrit gevin to his sone, it was nawayis to commit any fact or deid to the offence of his Maiestie, or his heines autoritie ; bot to pas over to Orknay, and to tak intromissioun with his Houffis, guidis, and geir being thairintill, vpon mere ignorance and simplicitie ; nawayes thinking that ony sic command fould infer Tressone, or ony vther cryme or offence aganis his gracious Souerane. And, thairfoir, fleing fra all forder defence of his awin innocencie, hes his refudge to his Maiesteis grace and mercie : And, as of befor, craves God and his Maiestie pardoun for his oversight and negligence on this poynt ; and in all humilitie and submissioun cumis in (his) hienes Will for the samyn : And ratifeis his former Deposition, in everie point.

THE JUSTICE referrit the said Dittay to the tryell of the honourabill persones of Assyse vnder writtin, quha war lauchfullie summond to that effect.

ASSISA.

JAMES, ERLE OF GLENCAIRNE,	DAVID, LORD SCONE,	WILLIAME, LORD KILMAWERIS,
GEORGE, ERLE OF WENTOUN,	WILLIAME, LORD SINCLAIR,	JOHNE GRANT of Freuchie,
JOHNE, ERLE OF PERTHE,	JOHNE, LORD HEREIS,	SIR PATRIK HEPBURNE of Wauchtoun,
ROBERT, ERLE OF LOUTHANE,	JAMES, LORD TORTHICHENE,	ROBERT ARNOTE of Fairny,
WILLIAME, ERLE OF TILLIEBARDIN,	HEW, LORD SENPILL,	SIR HARIE LYNDSEY, elder of Kynfawnes.

My Lord Aduocat takis instrumentis of the sueiring of the Assyse : And for verificatioun of the Dittay, vses the hail Depositiones of the Witnессes producet ; pairtlie subscryuit be the pairteis, and pairtlie be the Lordis Examinatouris ; speciallie, the Depositiones of the Witnессes mentionat in the Dittay : Produces the Letter of Tak¹ grantit be his Maiestie to Sir James Stewart, contening the Commissioun of Schereffschip : Repeitis the notorietye of Mr Johnne Fynlafones office of Schereff deputrie : Repeitis the Commissioun producet, grantit to my Lord Bischope of Orknay ; and lykwayis, my Lord of Caithnes Commissioun ;

¹ Lease.

with the thre feuerall Letteris direct to Robert Wynrahame, Yla Herauld, and executiones thair of : Repeitis the Criminall proces led and deducet aganis vmq^{le} Robert Stewart, and remanent perfones his complices ; with the Sentence and dome pronouncet aganis thame, beirand that the haill crymes thairin contenit war done and committit be thame and thair complices, of my Lord Orknayis speciall directioun and command : Repeittis the tua Miſſiues, writtin be Johnne Scherp, at my lordis command, as he affirmes, quhilkes war gottin vpone Duncane Mitchell : Repeittis the Warrant direct be my lord, to eſtablifche the keiping of the Caſtell of Kirkwall in the perfone of Patrik Halcro : Repeitis the Depoſitioun of Patrik Halcro and the ſaid vmq^{le} Robert thairanent : Produces the Band ſubſcryuit be the cuntrie people, for taking eafald pairt with Robert, in the former Rebellioun prãctizet be him in Orknay : Produces ane Charter, grantit be my lord (Earl of Orknay) in fauoures of Patrik Halcro, ſubſcryuit at the Caſtell of Dumbarten, of certane landis in Orknay, for taking pairt with the ſaid Robert Stewart in the ſaid Rebellioun, albeit that cauſe be nocht expreſſit in the ſaid Charter : Repeitis the Judiciall Confeſſioun maid be my lord, vpone the tuelf day of Januar laſt, quhairin he hes Confeſſit, that the Caſtell was ſurpryfit be Robert, his ſone, be his directioun : And the ſaid Erles cuming in (his Majeſty's) will for the ſamyn : Repeittis the haill Depoſitiones maid be Robert, befor he was pannellit ; his Depoſitioun maid the ſamyn day that he was pannellit ; his Judiciall Declaratioun vpone pannell ; and his Declaratioun vpone the Scaffold : With the Depoſitiones of Patrik Halcro, James Lyoun, Johnne Scherp, Duncane Mitchell, Duncane M'claren, Barnard Stewart, Mr Michell Mair : And in ſpeciall, thair Depoſitiones maid to the Lordis of Secreit Counfell, being confrontit with the Erle : Repeitis his lordſchipis cuming in Will, this day ; and ſpeciallie, his ratificatioun of his former cuming in Will, vpone the tuelf of Januar. And thairupoun aſkit instrumentis : And Proteſtis for Wilfull Errour aganis the perfones of Affyſe ; and that thai fall incur the lyk cryme and puniſchment of Treafone quhairvpoun the pannell is accuſet, gif thai acquit him thair of.

VERDICT. The Affyſe, all in ane voce, be the mouth of James, Erle of Glencairne, chancellor, ſſand, pronouncet, and declairit the ſaid PATRIK, ERLE OF ORKNAY to be GILTIE, culpable, and convict of the treſſonable Rebellioun committit be vmq^{le} Robert Stewart, his baſe ſone, and his rebellious aſſociattis, within the cuntrie of Orknay : Quhilk was done and committit be the ſaid Robert and his complices, of the ſpeciall cauſing, command, devyſe, and directioun of the ſaid Patrik, Erle of Orknay, his ſſather ; in forme and maner ſpecifeit in the Dittay and Depoſitiones producet be our ſaid ſouerane lordis Aduocat, for verification thair of ; ſpeciallie, conforme to the ſaid Erle of Orknay his awin Depo-

fitioun producet and subferyuit with his awin hand, and this day ratifeit and renewit be him in judgement; ffor the quhilk he is cum in his Maiefteis will.

SENTENCE. The Justice, be the mouth of Johnne Dow, dempfter of Court, Ordanit the said Patrik, Erle of Orknay, to be tane to the Mercat-croce of the burgh of Ed^r, and thair, vpon Fryday nixt, the thrid of this instant, betuix tua and thre houris eftir none, his heid to be ftrukkin from his body: And all his landis, lordfchipis, leving, heritages, takis, fteidingis, rowmes, poffeffiones, offices, digniteis, rentis, guidis, and geir, to be fforfalt and efcheit to our fouerane lordis vfe, as culpable and convict of the faidis treffonabill crymes.

[It has been thought proper to preserve the following entries. The absence of so many ASSISORS, on such an important occasion, must doubtless have been occasioned by the "grit ftorme and feafone of the 5eir." It is proper, however, to remind the reader, that Calderwood asserts that they '*withdrew themselves from his Affyse.*'¹

COMPEIRIT Hew Dunbar, wryter, *excufatorio nomine* for HEW LORD LOWDOWN, and declairit to pe Justice, that pe said Lord of Lowdown was past pe age of thre scoir 5eiris, viffeit with dyuerfe bodielie infirmiteis, speciallie ane grit dollour,² and fairnes in his richt leg; quhairthrow, in pis grit ftorme and feafone of the 5eir, he is nocht hable to travell to the keiping of this Justice Court, to haif past upone pe Erle of Orknayis Affyse, conforme to charge gevin to him for pat effect, without the grit haizaird of his lyfe: And producet ane Testimoniall pairupoun, subferyuet be James Greg, Minister at Lowdown, Mr George Walker, Minister at the Kirk of Auchinlek, and Mr Alexander Wallace, Minister at Galstoun. Quhilk Testimoniall, and excuse mentionat pairintill, the Justice admittit. Quhairupoun the said Hew Dunbar askit instrumentis; and protestit that pe said Lord of Lowdown should be fred and releivit of his vnlaw.

Compeirit lykwayis Mr James Oliphant, Aduocat, *excufatorio nomine* for THOMAS ABERCROMBY OF THAT ILK, and declairit, that he was hevelie diseasit of ane fall; and pairthrow vnable to travell to this dyet, to pas vpon the Erle of Orknayis Affyse, without grit hazard; and producet, for cleiring pe veritie pairof, ane Testimoniall subferyuit be Mr Williame Glas, Minister at Dunkeld, and be dyuerfe of the Elderis of that parochin. Quhilk Testimoniall and excuse pe Justice admittit, &c.

Compeirit pe said day, Thomas Fallafdaill, Proveist of Dumbarten, *excufatorio nomine* for ALEXANDER COLQUHOUN OF LUSE, and declairit that he was viffeit with ane grit feiknes, and nocht hable to travell to the keiping of this dyet, being fummond to pas vpon the said Erle of Orknayis Affyse; and pairupoune producet ane Testimoniall, subferyvit be Mr Walter Stewart, Minister at Kilpatrik. Quhilk the Justice admittit, &c.

The quhilk day JAMES MARQUEIS OF HAMMILTOUN, WILLIAME ERLE OF ANGUS, JOHNNE ERLE OF MONTROIS, JAMES ERLE OF MURRAY, PATRIK ERLE OF KINGHORNE, ALEXANDER ERLE OF HOME, ALEXANDER GORDOUN of *Clunie*, SIR ALEXANDER FALCONER of *Halkertoun*, SIR ROBERT BRUCE of *Clackmannane*, JAMES HADDENE of *Glennageis*, SIR WILLIAME STEWART of *Gairmetullie*, JOHNNE BUCHANNANE of *that Ilk*, SIR ROBERT GORDOUN of *Lochinvar*, and WILLIAME DOUGLAS *appeirand of Drumlanrig*, being oft tymes callit, &c. and nocht compeirand, thay, and ilk ane of thame, for pair non-compeirance, war unlawit, and amerciati in the panes contenit in the Actis of Parliament.

¹ See this Coll. III. 312, &c.

² Pain; trouble; disease.

APPENDIX OF ORIGINAL DOCUMENTS,

ILLUSTRATIVE OF THE TRIAL OF PATRICK, EARL OF ORKNAY.¹(1.) LETTER, THE KING *to the Privy Council of Scotland, 'anent the oppressed People of Orkney.'*²

RICHT trustie and weilbeloveitt cofines and counfallouris, We greitt 3ow weell. HAVEING red that 3our Lettre, sent with pe COMMISSIOUNE defyreit by those oppreffit peopill, complepantis vpone THE ERLL OF ORKNAY; houfoevir, the same is groundit only vpone civil Horningis, and that the Commissiounne conteanes leveying of menne, befeiging of houffis, reasling of fyre, and dispenfatiounne for Slaughter in the vseing of it, togidder with a WARRANT of concurrence for the country peopill of CAITHNES, which is thocht man³ breid a farther wnquyetnes; and that the lyk Commissiounnes hes not bene grantit, except quhair the REBELLIOUN wes for a criminall caus: 3IT, haveing dewlie considerit the miserie of the poore distressit peopill, whose hard fameilhing estait is worfe than death; the numberis of thame, whiche is a great presumptiounne that fume of thame hes over iust caus; thair continowall outcryis and exclamatiounes heir, to the gritt scandell of our kingdome and COUNSELL thair, as if Oppressioun wer tollerated thairin, and that the Counfall wer cairles to remedy it: And then, THE ERLL OF ORKNAYIS awin contempteous Rebellionne, nevir preassing aither to satisfie the pairtie, or relax him self fra the horne: The contenowance of whiche disobediance, albeit for a civeill caus, can have na better constructiounne of ws, than that it is becum of the natur of a criminall. WE, vpone the respectis foirfaidis, being loath that the distressid sould not have the benefeit of our releiff, and the proud and rebellious not feill the weight of our iust wreath and indignatioun, have concluidit to grant the said Commissioun, in forme as it is defyrit, and hes signed and sent heirwith wnto 3ow: Bot, as We have evir bene unwilling to condem ony pairtie wnhard, and pairwith loth to cut aff a member quhair pair is any hope of recoverie pairof, We heve thocht meit to will 3ow, by oppin Proclamatioun, chairge THE ERLL OF ORKNAY to compeir befoir 3ow the secund day of Marche nixto-cum, for to give all dew and ressonable satisfactioun that may be iustlie demandit of him be ony who presently ar complepantis one him, so as We be no farder troubleid and importuned with thair Petitiones;⁴ with certificatioun to him and⁵ he fail of his appeirance that day, that not only the foirfaid Commissiounne salbe grantit to those quho presentlie desyres the same, in suche forme as it is socht, bot thay, in the executiounne pairof, salbe assisted with our power and authoritie, boith be sea and land, for the punisshing of his Rebellionne. AND if he do cum pair, at the day foirfaid, 3ow fall tak sum good ordour that he may be furthcummand,⁶ untill such tyme that he have aither cleirit or satisfeit all compleanars aganes him. AND in cais of his not compeirance, 3ow fall thane exped this present Commissiounne, and delyver it to the pairteis futtareis;⁷ and 3ow fall give untill thame suche Warrands for concurrence of the cuntry, or quhatevir ellis may further the prosequutting of the Commissiounne. For doing quhairof, thir presentis salbe 3our sufficient Warrant. And willing 3ow to be cairfull in the spedie directionne of this Proclamatiounne, as 3ow wald eschew our reprooff, ffor ony neglect of tyme pairin, We bid 3ow fairwell. FROME our Court AT CHETFOORDE, the 6 of December, 1608.

[JAMES R.]

To our rycht trustie and weilbeloveit cofines and counfallouris, the Erll of Dumfermling, our Chancellor, and remanent lordis and wtheris of our PRIVIE COUNSALL OF SCOTTLAND.

¹ Reference is particularly made to the large COLLECTION OF PAPERS appended to the Trial of *Robert Stewart* and others, for their Rebellion in Orkney, which all relate to this present Case. See this Collection, Vol. 111. p. 283, &c.

² From a Copy preserved by *Lord Haddington* in his MS. Collection of State Papers. ³ Must. ⁴ The

number of Supplications and complaints from THE PEOPLE OF ORKNEY to THE KING himself was very great: but he delayed taking any step until importuned to grant this Commission; which, though at length he subscribed, was clogged with the additional delay of ordering the *Privy Council* to charge the *Earl of Orkney*, of new, to appear before them; so as, if possible, to divert the *Earl* from his criminal courses. But he had long contemned the Proclamations and charges of the *Council*; and this new charge would merely appear to him as a fresh proof of their imbecility; and as he could 'call the King his cousin,' so he hoped that the *Council* would not dare to molest him in his Island Kingdom. ⁵ If. ⁶ Forthcoming. ⁷ Suitors; petitioners.

(2.) NOTE OF THE CONFERENCE *had be the Secretare and Aduocat¹ with the Erle of Orkney.*²

MY Lord Aduocat and I repaired to the Castell of Ed^r to THE ERLE OF ORKNAY, and declaired to him that We had commandement from HIS MA^{TIE} to examine him, vpon the causes of THE REBELLION OF ORKNAY. He declaired, that he wes innocent and ignorant thair of. That *Sir James Stewart*³ came to the Castell of Ed^r to him, and schew that his sone *Robert* wes gone to Orkney, whoes actiones thair might breid offence to HIS MA^{TIE} and danger to *the Erle*; who answered, that want of meanes had forced *Robert* to gang thair, to vplift sum restis⁴ of the Tennantis dewties auchtand to *the Erle*, to help to supplie *the Erles* wantis and his owne. That since it wes evill tane, he wald wryte to *Robert*, that he might retire furth of Orkney, desyring that *Sir James* wald cause convoy his Letter to his sone, and command his doaris to giue ouerflight to *Robert* to transport him self to *Caithnes*. That he neuer wrait any vther Letter to *Robert* since he went to Orkney.

It being replied be ws, that efter *Robert* had tane *BIRSA*, and disobeyed the chaarge vsed be *the Sheref-depute* to rander that House, vnder the payne of Treason, he had writtin to *the Erle*, who, having ressaued his Letter from *Duncane Mitchell*, Poist, he had writtin bak to him with the said Poist. He denyed the wryting of any such Letter to his sone; and when he saw his seruand, *John Schairp*, of mynd to wryte to *Robert* with that Poist, he had dischaarged him to wryte; and that *Schairp* had desyred him not to find fault, that he might send his owne privat Letter, answering to that which he had ressaued from *Robert*; bot that nather *Schairp* nor *Mitchell*, being broght to his presence, wald say any thing to the contrarie of this his declaration: Which is the substance of all that he wald say to ws in that poynt; adding, that no thing proceeding from him had occasioned THE REBELLION; bot that the extreame rigour vsed be *Mr John Finlason* to the cuntrie people, and the wrong intended be *Mr John* to the cuntriemen, who, with great haifard of thair lyves, had forced THE PIRATES,⁵ and tane thame and thair schip, had disposed thame to REBELLION. And that thay had perswaded *Robert* to assift thame aganis *Mr John Finlason*, and to be head to thame in thair interpryses.

Being demanded, what condicion he had made to *Patrik Halero*, for his joyning in this Rebellion? Denyed that he knew him familiarlie, or even had to do with him; and that no thing had moved *Halero* to mell in these turnes bot his great affection borne to *Robert*, his sone. Farder, we could not induce him to grant, in ony circumstance, of the proceedingis of his sone in his Rebellioun. We declaired to him, that what he concealed of the cairiage of this interpryse wald be detected be his sone *Robert*, *John Schairp*, and *Mitchell*, who wer all in handis. He answered, that he wes confident that thay could say no farder nor he had declaired to ws.

(3.) EXAMINATION of *Patrick Earl of Orkney*, and Re-Examination of *John Schairp* and *Duncan Mitchell*.

AT EDINBURGH, the secund day of Nouember, 1614. In presence of my Lord Chancellour, cecretair, President, Preuie Seale, Thesauair-depute, Clerk of Regifiser, Aduocat, and Medope.

PATRIK, ERLE OF ORKNAY, sworne and demandit, yf he knowis *Thomas Layng*? Deponis that he knowis him, and that he wes some tyme his seruand; and rememberis not yf *Thomas Layng* broght ony Letteris to him oute of England.

Demandit, yf euer he had ony purpois or intentioun to haif brokin warde? Deponis that he had nevir ony suche purpoise or intentioun to haif brokin warde.

Demandit, yf he gaif ony directioun or warrand to his bafe sone *Robert*, anent this REBELLIOUN IN

¹ Sir William Oliphant of Newton.

² From the Original, in the *Dumfrye Coll. of MSS.* Adv. Library, holograph of Lord Binning, afterwards Earl of Haddington, &c.

³ Of Killeith, afterwards Lord Ochiltree.

⁴ Arrear of rent and duties, &c.

⁵ See this Collection, Vol. III. &c.

ORKNAY, and for taking of the *Houffis* of *Birfay* and *Kirkwall*? Deponis, he never gaif ony fuche directioun to his sone.

Demandit, yf he write ane Letter to his sone with *Patrik Murray*? Grantis, that he write fuche ane Letter, and that the contentis thair of wes onlie to desire his sone to leave the cuntrey of Orkney, and to retein him self to Caithnes to the *Laird of Murkill*.

Demandit, yf he write ane Letter to his sone *Robert*, with *Duncane Mitchell*, poist, and what wes the contentis of the Letter? Deponis, that he rememberis that he caufit wryte ane Letter to *Robert* with the said *Duncane Mitchell*, when the Depouner wes caryed fra the *Castell of Edinburgh* to *Dunbartane*, bot he rememberis not of the contentis of the Letter; nather knawis he yf he subferyuit the Letter, or how it wes directit on the bak.

Demandit, quhat verball directioun he gaif to *Duncane Mitchell*, the poist, to cary to his sone *Robert* at that tyme? Denyis that he gaif him ony verball directioun, bot onlie to desyre his sone to gett him money.

Grantis, that *Duncane Mitchell* brocht him ane anfuer fra *Robert*, bearing, that he had tane the *House of Birfay*, becaus the *Schereff* persewit him. And that he had no other place of refudge to keepe him in; and that his man *Downy Lyell* wes hurt.

Denyis, that he send ony directioun to his sone with *Duncane Mitchell* anent the taking of *Birfay*, or that he had ony conference with *Mitchell* at his bak-coming fra Orkney, anent *Robertis* taking of *Birfay*, or anent the persute of the *Schereff*.

Demandit, yf he wryte to *Patrik Halero* to tak *Barnard Steuartis*¹ lyffe? Denyis the same.

Grantis, that *Patrik Halero* come to *Dunbartane*, and the Depounair mett with him thair. And denyis, that thair wes ony speeche or conference with thame, bot generall woirdis; and sayis, that he nevir spak sax woirdis to *Patrik Halero*.

Demandit, yf he had ony conference with *Barnard Steuarte*, anent his sone *Robertis* going to Orkney? Deponis, he neuir conferrit with him vpoun that subiect.

Demandit, yf he caufit his man *Johnne Schairp* wryte ony Memoriallis to his sone *Robert*? or yf the Memoriallis contenit a directioun to his sone to send to *Noroway* for poulder? Denyis, that ony fuch Memoriallis wer writtin be him, or at his directioun; and the depouner rememberis not of ony Memoriallis writtin be him to *Robert*.

Demandit, yf he had ony conference with his sone *Robert*, at ony tyme, for geving ouer of the *Castell of Kirkwall* to the *Bischope*? Deponis, that he fand fault with his sone that he had gevin ouer the House, without taking Inventair, vnder the *Bischopis* hand, of the goodis within the House. And he had no other caus of offence aganis his sone, for that earand.

Denyis, that euir he had ony conference with his sone, after the geving ouer of this House to the *Bischope*, anent the taking of the House agane; or that he bad his sone prove any prettye man, yf the House come in his handis agane.

Demandit, yf he gaif ony directioun to *Johnne Schairp* to wryte ane Letter to his sone *Robert*, willing him to follow his Memoriallis? The depouner rememberis not of ony fuche Letter.

Demandit, yf he wryte ane Letter to his sone *Robert*, willing him to trye the cuntrey people, yf thay wald tak his parte? Denyis the writting of ony fuche Letter.

Demandit, quhat directioun he gaif to *Johnne Schairp* to carye to Orkney? Deponis, that he directit him not to Orkney, bot send and directit him heir to his *Majestis Counsell*, with Letteris to the *Erll of Glencairne*, to do² for him at the *Counsellis* handis. And sayis, planelie, that the said *Johnne Schairp* had no directioun from the depounair to go to Orkney; and that the said *Johnne* being coming to this burgh, and getting informatioun at the *Cowde-bridge* that *Duncane Mitchell* wes

¹ Keeper of the Castle of Birsay, who had been appointed by Sir James Stewart of Killeith, the new Chamberlain and Sheriff-principal of Orkney, under the King.

² To act or procure for him.

tane, and that the said *Johnne* wald be tortourit yf he come to *the Counsell*, the said *Johnne* thairvpoun tooke occasioun to eschew.¹

Demandit, yf he caufit mak ane bed for his sone *Robert*, in his awne chalmer, within *the Castell of Edinburgh*, tua nightis afoir his going to Orkney? Deponis, that he caufit to mak his bed in his chalmer, becaus the wyfe of the Housfe quhair he lay, in the Castell, wes grite with childe and at the poynte of hir delyuerye.

Denyis, that he gaif directioun to *Johnne Schairp* to write ane Letter in his awin name to *Robert Stewart*, to shaw him, yf he come heir that he wald be hangit.

Demandit, quhat he meaned be that pairt of his Letter writtin to his sone *Robert*, quhilk Letter wes gottin vpoun *Duncane Mitchell*, quhairby he allowit of the forme and tennour of *Robertis* Letter writtin to him? Deponis, that he meaned no thing, bot allowit that *Robert* had writtin the simple treuthe.

Demandit, quhat wes his maneing in the other poynte of the Letter, bearing, ‘thair is other materis heir to think vpoun nor siche thinges as thay. I beleve HIS MAIESTIE thinkis litle of these materis?’ Deponis, that the deathe of the Prince,² and the trouble quhairin the Counte Palatyne³ wes lyke to be, through the invasioun of the Spaniard, maid the depouner to beleve that his Maieftie had other thingis to think vpoun nor⁴ Orkney. And tuicheing that poynte of the Letter, beareing, that ‘yf his sone come heir, the Tolbuthe wald be his best,’ the depouner meaned no thing, bot that he wald be wardit, bothe for his debt and taking of the Housfe. And grantis, that the Letter bearing thir headis wes all writtin be the depounaris directioun.

Denyis, that euer he had conference with *Patrik Halcro*, or send ony worde or message to him contening a promeis of rewarde, yf he wald assit *Robert*, his bafe sone, in his REBELLION.

JOHNE SCHAIRP, re-examinat, deponis, that afoir he come oute of *Dunbartane*, he knew that *the Gaird* wes seikand him; and *the Erll of Orkney* tauld to the depouner, that *the Gaird* wes seikand him. And deponis, that *the Erll*, in plane termes, directit him to go to *Orkney*; and sayis, that *the Erll* gaif to the depouner ane Letter, directit to *the Erll of Glencairne*, purpoillie to haif showne the same to the souldiouris of *the Castell of Dunbartane*, yf he had beene stayit be thame, and to mak thame to vnderstand that *the Erll of Orkney* had directit him heir to the Counsell. And sayis, that *the Erll of Orkney* forbad the depouner, in ony cause, to gang to *Edinburghe*; bot to gang to *Dundee*, and swa to *Orkney*.

THE ERLL OF ORKNEY, being confrontit with *Johnne Schairp*, vpoun that poynte of his Deposition, tuitcheing the directioun gevin to *Schairp* to go to *Orkney*, and tuitcheing the occasioun of the Letter writtin to *the Erll of Glencairne*, *the Erll* is direct contrair to *Schairp*, in that poynte; and *Schairp* abydis constantlie be his Deposition.

The said JOHNNE SCHAIRP his formair Deposition, maid in presence of *the Counsell* yisterday, the first of this instant, being red in the audience of the said *Erll of Orkney*, the said *Johnne Schairp* abydis constantlie be it, as a trew Deposition; and the said *Erll* denyis the same, except in so far as he hes confest be his awne Deposition.

DUNCANE MITCHELL, poist, his Deposition, maid in presence of *the Counsell* vpoun the fyft day of Julij 1614, being red, in the audience of *the Erll of Orkney*, the said *Duncane Mitchell* stooode to it, as ane trew Deposition; and the said *Erll* denyit the same.

(4.) EXAMINATION of the *Earl of Orkney*, *Patrik Halcro*, and *Robert Stewart*.

AT EDINBURGHE, the xv day of Nouember, 1614. In presence of my Lord Chancellour, the Erllis of *Cassillis* and *Caitlmes*, the Lordis Secretair, President, Preue Seale, Thesaurair-depute, Justice Clerk, Clerk of Register, Aduocat, Sir Andro Ker, and Sir Alexander Drummond.

PATRIK ERLE OF ORKNEY examinat and demandit, yf he gaif ony directioun to his sone *Robert*

¹ Escape. ² Henry, Prince of Wales, who died in November, 1612, at Saint James's. ³ The Palsgrave, or Count Palatine, whose marriage with Princess Elizabeth had been delayed, on account of Prince Henry's death, till the month of February following, 1613. ⁴ Than.

anent THE REBELLIOUS IN ORKNAY, or for taking of the *Houffis of Kirkwall and Birsay*? Deponis, that he nevir gaif ony fuch directioun to his sone.

Demandit, yf he had ony conference with *Patrik Halero*, at his being in *Dunbartane*, anent the taking of the *Houffis of Kirkwall and Birsay*? Deponis, he had no fuche conference with *Patrik*; and that he nevir delt with *Patrik* to affist his sone, yf he come to Orkney. Denyis alſua, that he fend ony directioun to his sone *Robert* or to *Patrik Halero* for ſending to *Noroway* for poulder.

(5.) PATRIK HALCRO, re-examinat, humblit on his knees, and deiplic ſworne; and his Depoſitioun, maid yſternight, being red vnto him, and he demandit vpoun the veritie thairof, he, vpoun his grite and ſolemne oathe declairit, that his Depoſitioun wes trew; and he ratifeit the ſame, and wald ſtand to it.

(6.) PATRIK ERLL OF ORKNAY, deiplic ſworne, and confrontit with *Patrik Halero*, vpoun the contentis of his Depoſitioun, maid yſternight, in preſence of the *Counſall*; the ſaid *Erll* denyit the haill contentis of that Depoſitioun. And the ſaid *Patrik Halero* conſtantlie affermed and avowit, in the *Erllis* preſence, that the *Erll* directit him to tak the *Cyſtell of Kirkwall*, and to affist his sone *Robert* in that earand; and that his haill Depoſitioun wes trew. Quhillk being red, in the *Erllis* audience, wes denyit be him, ſaying, he rememberit not that evir he had ony fuche conference with *Patrik Halero*, vpoun that ſubiect.

(7.) ROBERT STEUART being of new preſentit befor the *Counſall*, and his Depoſitioun, made yſternight, being red vnto him, and he demandit of new vpoun the treuthe and veritie thairof, he deponit and declairit, vpoun his grite oathe, that the ſame wes of veritie.

(8.) PATRIK ERLL OF ORKNAY, confrontit with his sone *Robert*, vpoun the contentis of *Robertis* Depoſitioun, maid yſternight, as ſaid is, the ſaid *Erll* denyit the ſame: And the ſaid *Robert*, in the *Erllis* audience and preſence, affermed and avowit the ſame to be of treuthe and veritie, as it wes writtin and red in the *Erllis* audience.

(9.) DEPOSITIONS of *James Lyoun*, baſe ſone to the *Maſter of Glamis*, *Mr Michael Mair*, and *Duncan McClellane*.

AT EDINBURGH, the nyntene day of November, 1614. In preſence of my Lordis Chancellour, Secretair, Clerk of Register, and Aduocat.

JAMES LYOUN, baſe ſone to the late Mr of Glamis,¹ ſolemnlic ſworne and demandit, Yf at ony tyme he paſt to *Dunbartane* to viſite the *Erll of Orkney*? Deponis, that in ſommer bigane two year, the *Erll of Orkney* ſend Mr *Michael Mair*, then his Secretarie, to the depouner, he being in the heade of the *Cannogait* for the tyme, with a commiſſioun, deſyring the depouner to come to him to *Dunbartane*. Whereupoun the depouner raid with him to *Dunbartane*. And at his coming thair, the *Erll* layed to his chairge, yf he wald affist him to brek warde oute of the *Cyſtell of Dunbartane*? And at the firſt, the depouner refuſit to haif ony dealing in that mater. Bot being earniſtlic delt with be the *Erll*, and mony fair promiſſes maid by the *Erll* to him, in end the depouner yeildit to do his beſt endevoiris to help the *Erll* to eſchape, and to convoy him to *Orkney*. And deponis, that the ſaid Mr *Michael Mair* wes vpoun the *Erllis* counſall, in this mater; and proponit the ſame to the depouner, in the way, as they wer ryding to *Dunbartane*. And after the depouner had imbraceit this condition, he and the ſaid Mr *Michael* had diners conferences and ſpeeches, anent the meanes and poſſibilitie to effectuat thair interpriſe. And deponis, that the ſaid Mr *Michael* was imployit be the *Erll* to deale with the *Laird of Cluny*, to imbarke him in this interpriſe. And the ſaid Mr *Michael*, with the depouner, had ſpeeches with *Cluny* vpoun that ſubiect, at the *Town of Leithe*, on the Linkis; and the

¹ This perſon was probably ſon of the Hon. Sir Thomas Lyon of Auldbar, ſecond ſon of John, ſeventh Lord Glamis. He was ſtyled the *Maſter of Glamis*, and enjoyed the important office of Lord High Treasuſer about the period of ten years, from 1586 to 1595.

Laird promiseit to gif his assistance and furtherance in that mater. And for this effect, they appointit a tryist and meeting to be at Striuling, vpoun the Satterday thairefter, and the depouner and *Mr Michael* mett vpoun Satterday, at night, at *Striuling*; and *Cluny* came not quhill Sunday, in the moirning, bot send his man *David Gairdin* thair, vpoun the Satterday, to excuse his absence. And when thay mett altogidder vpoun the Sunday, thay reafouned vpoun the meanes how to gett the *Earl* out of the Castell; and resolued to tak him ouer the wall by a cord, and ane instrument of irne,¹ whiche the depouner caufit mak. And *Mr Michael* promiseit to prepair the tow.² And it wes aggreit that when all thingis wer in reddynes for the *Erll* eschaip, he sould proceed as yf he had some earand ado in the Houfe, and send his three Keeparis, one efter another, for dispathe of his earandis; and then he sould come away. And thay aggreit to bring some horflis to *Dunbuk-Hill*, to haif convoyit the *Erll* and his companie away; and ane horfe sould haif bene broght to the Castell-wall, for the *Erll* him self; and *Cluny* sould haif broght thir horflis to *Glasgow*, bot *Cluny* broght not the horflis with him. And the depouner raid to *Dunbartane*, and the said *Mr Michael* tauld the *Erll* that the depouner was come, and all thingis wer prepairit and in reddynes for his eschaiping. And then the *Erll* began to fant; and maid choife, rather to suborne the *Portair* nor³ to haifard to come over the wall; and so delt with the *Portair* vpoun that subiect; who reveillit the same to the *Laird of Buchannane*, who had the charge of the Houfe for the tyme.

Deponis, that at Martymes, in the yeir foirsaid, the said *Mr Michael Mair* come of new to the depouner, he being in the heade of the *Cannogait* for the tyme, with a commissioun frome the *Erll* to come West to him agane to *Dunbartane*. And the depouner refusit to go West, saying, that ‘he wald mell no forder with the *Erll*, nor in nane of his courfes.’ To whome *Maister Michael* anferit, ‘I see this man (meaneing he the *Earle*) hes not the grace of God in him; I will lykewayis haif no forder dealling with him!’

Deponis, that after *Robert Steuart*, bafe sone to the *Erll of Orkney*, wes come out of *Orkney*, and fred of warde for keeping of the *Castell of Kirkwall* aganis the *Bishop of Orkney*, the depouner, in deling with *Robert* in this Toun, delt with him that he wald mak his addresse to Courte; and thair vfe his credite to gett his Maiesteis fauour: And sayis, that *Robert* wes willing to haif gone to Courte, bot maid his excuse vpoun the want of money, and his faderis offence againis him for geving ouer of the Houfe of *Kirkwall*; and *Robert* intreated the depouner to ryde with him to *Dunbartane*, and to interceid for him with his fader, bothe for his fauour and some money: And the depouner yeildit to ryde with him, and thay raid togidder to *Dunbartane*, and stayed thair bot ane night. And the depouner knawis not yf the *Erll* spak with *Robert* that night. And vpoun the morne, the *Erll* directit the depouner with a Letter to the *Erll of Cassillis*,⁴ being in *Carrik* for the tyme, for some money. And *Robert Steuart* raid with the depouner to *Carrik*. And when thay come bak agane to *Dunbartane*, the *Erll*⁵ wald not looke vpoun *Robert*, calling him ‘Feble vnworthie beast!’ vfeing mony imprecationis and cursles aganis him for geving over of the Houfe, saying, he ‘wes the wraick of him and his estate!’ And the depouner being reddy to come away frome *Dunbartane*, the said *Robert* come to him to the *Toun of Dunbartane*, desiring him to go againe and speeke his fader in his fauouris, and to tell him that he wald tak some disperat course, and go oute of the cuntrey, yf he could not procure his fauour. Wherupoun, the depouner went bak agane to the *Castell*, and eirnisillie delt with the *Erll* in *Robertis* fauour; bot the *Erll* could not with patience heir of him, bot gaif oute mony inveciue and dyspytefull speecheis aganis him, calling him ‘Fals, feble beast,’ for geving ouer of his Houfe. And in

¹ Probably a pulley, having a strong iron to fasten or hook upon the battlements of the Castle, so as to save the necessity of driving in a staple, which would necessarily occasion noise. ² Rope. ³ Than. ⁴ John,

fifth Earl of Cassillis, who married Jean, only daughter of James, *fourth Lord Fleming*, and relict of John Lord Maitland of Thirlestane, Chancellor of Scotland. Through her intrigues, he procured the office of Lord High Treasurer, in 1599, for which he was utterly incapable; and retired from it in disgrace, with the loss of 40,000 merks, &c. See *History of the Kennedys*, Quarto, Edin. 1830. ⁵ Of Orkney.

end, the depouner haueing promiseit in Robertis name, that Robert wald do ony thing the Erll wald command him, the Erll thairvpoune become to be more calme, and to gif eare to the depounnaris speeches in Robertis fauour. Wherupoun, the depouner broghte Robert to the Erle, and tauld to the Erll, that Robert wald do ony thing that the Erll wald bid him; to whome the Erll anfuert, that Robert had not a spirite nor courage to follow ony interprise; and Robert haueing craved of the Erll his fader, that he might haif a ryght of the landis of Westraue or Steanehoufe, the Earll wald yeild to gif him no thing, quhill first he had repairit the wrang he had done, in giving oner of his Houfe; and by recouering of the same agane, to play the pairt of a man. And the Erll haueing desirit the depouner that he wold gif him his worde and promiseis, in Robertis name, that Robert sould go to Orkney and recouer the Houffis agane, the depouner refuist to gif his promiseis or word, saying, ‘Robert wald speke and promiseis for him self!’ Whairupoun Robert, in the depounnaris audience, promiseit to the Erll to go to Orkney, and to tak in the Houffis agane. And then the Erll acceptit of him, saying, he ‘sould want no thing, and that he wald aduance him so far as he might. And so, the depouner haueing aggreit *the Erll* with *Robert*, the depouner left thame. And as he wes comeing away, *Duncane M^cClellane*, the Erllis poist, followit the Depouner to the Toun of Dunbartane, willing him to go bak agane to my Lord; and the depouner refuist to go bak, because he vnderstoode that the purpois of his bak-calling wes to haif delt with him to haif gone with Robert to Orkney. And the depouner meeting at that tyme with *James Annand*, sometyme the Erllis seruand, in Dunbartane Towne, the said James askit of the depouner, ‘yf he had aggreit the fader and the sone?’ And the depouner anfuert, ‘thay wer aggreit,’ and that ‘*Robert* must neidis go to Orkney, or thair wilbe no lyffe for him!’ To whom *James* replyt, ‘*The Erll* is ane unhappie man! He knawis *Robert* can do no goode in Orkney. His purpois is to bring him to the scaffolde, and to bring the sclander of his bloode vpoun the King!’ And vpoun the morne, the depounair raid fra Dunbartane towards Edinburghe; and *M^cClellane*, the poist, come to Edinburghe with him. And within tuintie dayis thairefter, *Robert Steuart* come to Edinburghe, and lichtit at *Henry Raes* house, and askit of him whair the depouner wes? And *Henry Rae* broght *Robert* to the depouner in *George Lafonis* house in the heade of *Pebilis-wynd*, quhair the depouner ludgeit; and *Robert* tauld to the depouner that he had vndirtane the interprise of Orkney, and wes resolut to go thair. And the depouner asking of him, how he wald be prouydit and furneist with money? *Robert* tauld him, that he had a Letter frome his fader to one *Johnne Smithe*, his fader’s mercheant in St Androis, to aduance him iij^c merkis of siluer. Whairupoun *Robert* and the depouner past to St Androis to haif gevin the money, and haueing stayed thair aucht dayis, *Johnne Smith* refuist to gif the money, vnles he had a Band vnder *the Erllis* hand, for the haill moneyis he was awand him afoir, including thairin the siluer now to be gevin, with the annuell¹ of the haill. And deponis, that thay onlie ressaunt at that tyme fra *Johnne Smithe* xx lib. to defray thair chargeis. Deponis forder, that at thair comeing oute of St Androis, *M^cClellane*, the poist, come to *Robert* with Letteris fra *the Erll* his fader; and the depouner saw and red ane of the Letteris, whilk wes a lang Memorandum, full of iniunctiounes how *Robert* sould carye him self in Orkney, bothe anent the taking of the Houffis, the intronissiou with the Erllis rentis, and what men he sould putt oute of the cuntrey. And the depouner rememberis wele of ane speciall poynte of the Memorandum, to witt, that *Robert* sould send the Erllis creare,² laidnit with beare and salt goodis, to Brein, in *Norroway*, and thair sell the same, and by poulder³ and bullett with the money that sould be gottin thairfoir. And that, aboue all thingis, *Robert* sould see that the Houffis wer wele furneist. And *M^cClellane* come bak with thame to Leithe. And deponis, that then thay raid to Dunbartane, and *Robert* stayed at the smithis house outwith the Toun, and the depouner raid fordwart towardis *the Castell*. And *the Erll*, being aduerteist that thay wer come to the smithis house, he send *Johnne Burne*, his seruand, to haif stayit thame at the smithis house. And the depouner forgadder with *Johnne Burne*, in the way betuix the smithis house and *the Castell*,

¹ Annualrent; interest.² A sort of vessel.³ Purchase gunpowder.

Johnne Burne delt with the depouner to go bak, saying thay had done evill to come, ffor *the Counsell* wald be in suspicioun that thay had some purpois for thair going to Orknay. And he tauld the depouner, that they wald not gett accefs to the Erll, yitt the depouner wald not be stayed, bot come fordwart to *the Casfell-yett*, and craueing entrie, he wes anfuert ouer the wall be one *Robert Knox*, who had the charge of the Houfe, that he wald not gett entree. Whairupoun, the depouner come bak, and being in ane grite anger, becaufe he could not gett entrie, he said to *Johnne Burne*, that he fould reveill all thair practizeis to *the Counsell*, seeing he could not get payment of the moneyis addebtit be *the Erll* to him. Deponis, that *Johnne Burne* askit of the depouner, yf he had prouidit ony men, in Angus, to tak with him to Orknay? And the depouner maid him to beleve, that he had prouydit some men in Angus, who wer goode fellowis, to haif gone thair. And the depouner named some of their names: And he did this purpoillie, to haif gottin payment of his moneyis.

Deponit, that *Johnne Burne* haveing showne to *the Erll* the depounaris discontentment for the want of his moneyis, and that he had avowit to reveill thair interprife, the Erll, fearing the reveilling and discouerie thairof, fend to the depouner with the said *Johnne Burne* xx f. Sterling; quhilk being refuist be the depouner, *the Erll* fend vther xx f. to him.

Deponis, that when he come bak to the smithis houfe, he said to *Robert*, 'he perfavit that the Erll had no vther courfe bot to bring him to the scaffold!' And *Robert*, waging his head, with a grite fighe, anfuert, 'I feare it falbe swa!'

(10.) MAISTER MICHAELL MAIR, seruand to *Mr Johnne Scott*, Directour of the Chancellarie; fworne, and demandit, 'yf he knowis of ony purpois that *the Erll of Orknay* had to brek warde? Deponis, he knowis that thair wes some speeches betuix *the Erll*, *the Laird of Cluny*, and *James Lyoun*, vpoun that subiect.

THE DEPOSITION maid be *James Lyoun*, in that pairt thairof concerning *the Erll of Orknay* his purpois to brek warde, and the conferenceis, meetingis, and resolutionis tane thairanent, betuix *the Laird of Clunye*, *James Lyoun*, and the depouner, being red to the said *Mr Michael*; and he being demandit, yf the same wes trew? Deponis, that he acknowledgeit the Deposition to be trew, as it wes writtin, except in that parte thairof concerning the suborning of *the Portair*, whairof the depouner knowis no thing. *In ceteris conformis.*

(11.) DUNCANE M^cCLELLANE, poist to *the Erll of Orknay*, fworne, and demandit yf he knowis ony thing of *the Erll of Orknay* his purpoiss anent THE REBELLION IN ORKNAY? Deponis, he knowis na thing thairof, and denyis that euir he hard ony conference or speeche betuix *the Erll*, *Johnne Burne*, *James Lyoun*, and *Robert Steuart*, or ony of thame, anent *the Erll* his purpois to brek warde, or anent the fending of *Robert* to Orknay.

Grantis, that the Erll of Orknay fend the depouner with tua Letteris to *Robert Steuart* and *James Lyoun*, and the depouner come to this toun to haif gottin thame heir; and missing thame heir, he past to St Androis, and forgadderit with thame comeing oute of the Toun, and delyuerit the Letteris to thame. And sayis, that *Robert Steuart* and *James Lyoun* tauld to the depouner, 'yf thay had gottin siluer in St Androis, that thay wald haif gone to Orknay; bot seeing thay gatt not siluer, thay could not go.' And the depouner, haucing gone bak to *Dunbartane* with this anfuert, the Erll fell oute in bitter speecheis aganis *Robert*, calling him 'Fals, feble knaife!' 'Villaine!' and 'Pultrone!' And 'he fould hang him with his awne hand!'

Deponis, that he hard the conference betuix *Robert Steuart* and *James Lyoun* be the way, as thay come frome St Androis, to witt, yf thay had gottin siluer in St Androis, that thay wald haif gone to Orknay and tane the Erlls Houffis. And the depouner tauld thir speecheis to the Erll, when he come bak to *Dunbartane*; wherat the Erll wes heichlie commovit, saying, 'Robert was ane feble beaft,'—and 'Or¹ he wer not hangit, he fould hang him with his awne hand; becaus vnworthelie he had left his Houffis, and had not grace to win thame agane!'

¹ Ere; rather than.

Deponis, that at this same tyme, *James Lyoun* said to the depouner, ‘Yff we go to Orknay, no man fall haif the credite¹ of carying our Letteris to and fra, bot yow.’

(12.) DEPOSITIOUN, *Robert Steuart, the Earl of Orkney, James Lyoun, and Mr Michael Mair.*

AT EDINBURGHE, the xxij of Nouember, 1614. In presence of my lordis Chancellair, the Erll of Caithnes, the Secretair, Thefaurair-depute, Clerk of Register, and Aduocat.

ROBERT STEUART, base sone to the Erll of Orknay, sworne, and demandit yf he knawis *James Lyoun*, sone to the lait Mr of Glamis? Depones, he knowes him very weele.

The DEPOSITIOUN maid be *James Lyoun*, vpoun the xix day of Nouember instant, in that poynte thair of tuitcheing the said James his interceiding with the Erll of Orknay, in fauouris of his sone *Robert*, the Erllis refusall to accept of him quhill he yeildit and promiseit to go to Orknay; and tuitcheing all the specheis past betuix thame in that mater, being red to the said *Robert Steuart*, and being demandit, yf the same wes trew? The said Robert acknowledgeit the Depositioun to be trew, as it is writtin and sett down.

The haill Depositioun foirsaid, maid be the said JAMES LYOUN, being red to the said ERLL OF ORKNAY, and he being demandit, yf the same wes trew? The said Erll deponit, that the same wes most vntrew. And deponit, that the said *James Lyoun* delt with him sundrie tymes to haif brokin wairde, becaus his lyffe wes in dangeir; and that he ever refusit to harken to *James*, in that mater. And deponis, that he wes ever in ane anger with his sone Robert, becaus he hantit *James Lyonis* company. And fays, confidently, that he had neuir conference nor speche with *James Lyoun*, anent *Robertis* going to Orknay.

(13.) The ERLL OF ORKNAY, JAMES LYOUN, and MR MICHAELL MAIR, being confrontit, vpoun that point tuitcheing the said Erll his purpois of breking of warde, and the conferenceis, specheis, and messageis past in that mater, conforme to the Depositiounis maid thairanent, the said Erll, vpoun his oathe, denyit the same: And the saidis Maister Michael Mair and James Lyoun, vpoun thair grite oathe, avowit and affermed the same to be trew.

(14.) The said ERLL OF ORKNAY, ROBERT STEUART, and JAMES LYOUN, being confrontit, vpoun the vther poynte of the said *James Lyonis* Depositioun, tuitcheing the Specheis and Conferenceis betuix thame anent THE REBELLIOUN IN ORKNAY, and how *Robert* wes imployit and directit in that earand? The said Erll, vpoun his oathe, denyit the same: And the said *James Lyoun* and *Robert Steuart*, vpoun thair oathe, avowit the same to be trew.

Slaughter.

Feb. 14.—JOHNNE MAXWALL, callit *Achilles Johnne*, in Dumfreis.

Dilaitit of airt and pairt of the crewall Slauchter of vmq^{le} Johnne Makculloche, mercheand burges of Kirkcudbrycht; committit be the said Johnne Maxwell and be vmq^{le} Johnne Maxwell, sone natural to vmq^{le} Williame Maxwell of Auchinlarie, vpone the landis of the Kirkhous, within ane quarter of a myle to the said burgh of Kirkcudbrycht, in the moneth of Nouember, the 3eir of God I^m. sex hundreth and threttene 3eiris, be geving to him of tua deidlie straikis in

¹ Trust. We shall confide in no one but you, to carry our Letters to and fro.

the heid, togidder with fyftene bludie woundis in his breift and bellie, and vther fyftene bluidie and deidlie ftraikis vpon the bak and fydis ; quhairof he immediatlie deceiffit.

PERSEWARIS, Thomas McCulloche of Barholme, Sir Williame Oliphant of Newtown, knyt.

PRELOCUTOUR in defence, Mr Thomas Wilfone, Aduocat.

Eftir reiding of the DITTAY, it was allegit be my lord Aduocat, that na prelocutour can compeir for defence of the pannell, for the cryme aboue writtin, fpecifeit in the Dittay ; becaus, immediatlie eftir the committing thairof, Letteris war direct, at the instance of the kyn and freindis of the defunct, aganis the pannell, be the quhilk he was charget to find caution for his compeirance befor the Justice or his deputis, at the day thairin contenit, of lang tyme bygane, to haif vnderlyne the law for the faid cryme ; quhilk charge, nocht only he difobeyit and maift contemptiouflic paft to the horne, bot alfo hes remanit fugitiue fra his hienes lawis continuallie fenfyne, for the faid fact : And producet the Hoirning, deulie regiftrat, for verifeing thairof.—To the quhilk it is anfuerit, be the pannell and his prelocutour, that, nochtwithftanding of the faid allegiance, he aucht to haif prelocutouris to defend, becaus he is relaxt fra the faid proces of horne ; and producet his Relaxatioun for verificatioun thairof : Quhilk the Justice admittit ; and ordanit his prelocutouris to be admittit to defend : Quhairupoun the pannell askit instrumentis.

It is allegit be the pannell and his prelocutour, that the DITTAY producet aganis him come nevir to his knowlege ; and thairfoir, befor ony forder proces be grantit in that matter, he aucht to haif a fyftene dayis grantit to him, to be advyfet thairupoun.—It is anfuerit, that the allegiance aucht to be repellit, in refpect he haifing committit the fact, vpon the notorietie quhairof, and for tryell of the pannellis guiltines, Letteris war direct, be the quhilk he was charget, vpon a fyftene dayis wairning, to find caution for his compeirance, as faid is, befor my lord Justice, at a day contenit in the faidis Letteris ; and for his difobedience was denuncet and put to the horne : And for cleiring thairof, repeatit the faidis Letteris of Hoirning producet.

THE Justice Repellit the allegiance, and Ordanis the matter to pafs to the tryell of ane Affyfe, vnles the pannell fay forder.

ASSISA.

Robert Vans of Campfurd,	Airthour Kennydie, fervand to	Johnne Turnour, Schereff-Clerk
Patrik Vans of Lybrek,	my Lord of Caffillis,	of Wigtoun,
Peter McDowell of Machirmoir,	Patrik Murdoch of that Ilk,	James Hair, indueller in Edr,
Patrik Edzer, burges of Wigtoun,	Hew Gordoun of Grange,	Gilbert Agnew of Mureithaith,
Pat. Hammiltoun, burges of Edr,	Alexander Gordoun of Littill	Alexander Agnew of Trong,
Archibald Stewart of Fintillache,	Mondurk,	Rt Makknab, burges, Quhithorne.

My lord Aduocat takis instrumentis of the fweiring of the Affyfe ; and for

cleiring to thame of the pannellis giltines of the crymes conterit in the Dittay, repeittis the Hoirning producet, beiring him to be fugitiue for the cryme : As also, defyret Mr Robert Glendonyng, Minister at Kirkeuldbrycht, and Eduard Forrester, Commissar, thair, thair aithes and declaratioun to be tane, quhat thay knaw anent the pannellis giltines or innocencie, in the said matter, for the Assyse forder informatioun.

It was affirmet be the pannell and his prelocutour, that the matter now being put in thair handis, thay fould nocht respect the persewaris informatioun and assertioun in this persute ; bot altogidder denyit the fact lybellit to be committit be him ; in respect he, at the allegit tyme of the committing thairof, was *alibi*, viz. in the Place of Teilling in Angus, lying deidlie feik, quhilk is ane hundreth myles distant fra Kirkeuldbrycht, quhair the Slauchter was committit ; quhilk he wald verifie, be sufficient and famous Witnesses, gif tyme war grantit to him to produce thame.

MR ROBERT GLENDONING, being suorne, Declairit, he could nocht remember that he knew Johnne Maxwell vpon pannell ofbefoir ; bot as to the veritie of the fact lybellit, it is of treuth, that vpon ane Fryday, at evin, in the moneth of November and 3eir lybellit, thair come tua litill men to the Toun of Kirkeuldbrycht, with Letteris of Captioun, of purpois, as the deponer was informit, to trouble vni^qle Johnne M^cculloche, quhair of he was maid foirfene be ane of the honest nyctbouris of the Toun : And the deponer, vnderstanding quhair Johnne M^cculloche was, adverteist him thairof, and defyret him to hald him self out of the way ; quhairvpon M^cculloche eschewit that nycht : And vpon the morne thaireftir, being Setterday, the day of his studie,¹ he, heiring of the Slauchter of Johnne M^cculloche, come to the boundis quhair it was committit, quhair he saw tua deid men, Johnne M^cculloche being maist crewallie strukin with ane quhinger, baith on his breist and bellie, and vpon his bak. And forder knawis nocht.

EDUARD FORRESTER, Commissar, suorne, and demandit, quhat he knawis anent the veritie of the premisses ? Declairit, that he saw Johnne Maxwell, presentlie vpon pannell, within the toun of Kirkeuldbrycht, the day of the Slauchter, immediatlie befor the committing thairof ; quha, togidder with vni^qle Johnne Maxwell, his associat, come yp to the deponeris chamer, and offerit to agrie with him anent the Confirmatioun of ane Testament ; and within ane schorte space thaireftir, hard of the committing of the said slauchter. And forder knawis nocht.

My lord Aduocat repeittis the Minister and Commissaris Declaratioun ; and Protestis, in respect thairof, for Wilfull Errour aganis the persones of Assyse, gif thay acquit.

VERDICT. The Assyse, all in ane voce, be the mouthe of the said Peter M^dowell of Machirmoir, chancellor, ffind, pronuncet, and declairit the said Johnne Maxwell to be Giltie, culpable, and convict of airt and pairt of the said slauchter, &c—SENTENCE. To be tane to the ordiner place of executioun, within the burgh of Ed^r, and thair his heid to be strukin frome his body : And all his moveabill guidis to be escheit, &c.

¹ Viz. the day he studied or prepared his sermons for the following Sabbath.

Treason—Declining the King's Authority—Alleging the Supremacy of the Pope—Hearing and Saying Mass, &c.

Feb. 28.—TRIAL OF JOHN OGILVIE, JESUITE.

[THE proceedings adopted against the ROMAN CATHOLICS and JESUITS, at different periods, after the time of the Reformation of Religion in Scotland, form a prominent part of the Ecclesiastical and Political History of the Country. Owing to the obscure and repulsive appearance of the Criminal Records, much valuable information has necessarily escaped the observation of the historian; but although the subject is one long since forgotten, it appears to the Editor to belong to the duty he imposed upon himself when he undertook the present Collection, to rescue from oblivion all those Trials which have preserved entire the memory of such events.

Among the most remarkable of those persecutions may be reckoned the Case of JOHN OGILVIE, a *Jesuit*, of Scottish extraction, who was a son of Walter Ogilvie of Drum. After an absence of twenty-two years in foreign countries, he returned to Scotland, in the month of May 1615, for the purpose of promoting the growth of the Roman Catholic Religion. There is little doubt that he was one of those enthusiastic individuals, who, at the imminent risk of fortune, and of life itself, scrupled not to lend himself a willing instrument for the accomplishment of some daring, dangerous, and destructive plot, which at that time characterised the whole of the ever-restless and ambitious proceedings of the followers of the Church of Rome, from the date of the formidable, but presumptuous, attempt of the Spanish Armada, and of the Gunpowder Plot, downwards. During the reign of KING JAMES, both before and after his accession to the English throne, seldom did a year pass over without some rumours of fresh attempts of the Jesuits against his life, or against the Religion, as by Law established, in England. There can be no doubt, from a perusal of the State Papers and Histories of this period, that some new attempt on the part of *Spain* and her auxiliaries was about to ripen into action, when the early detection and execution of numerous emissaries of the *Society of Jesus* frustrated its execution.

Without occupying more space, the Editor has merely to mention, that a Special Commission having been granted to THE PROVOST AND BAILIES OF GLASGOW, within whose jurisdiction Ogilvie was taken, his Trial is not recorded in the Books of Adjournal, but was reported by the Commissioners and their Assessors to the Privy Council, from whom their powers directly emanated. There cannot be a doubt that the Report of this Case was drawn up for publication, with the view of being extensively circulated in England. The phraseology is carefully revised, so as to be perfectly intelligible to an English reader; and though imprinted at Edinburgh by Andro Hart, immediately after the Trial took place, it must have been revised by some person skilled in the English Law, and familiar with its technicalities and practice.

The present reprint has been taken from a copy of the valuable Original Edition; in the Library of the Faculty of Advocates, Edinburgh.

Calderwood, a determined enemy to Episcopacy, has preserved the following curious memorials of these events, in his *MS. History of the Church of Scotland*,¹ which the Editor has thought worthy of being inserted in this place:—

Oct. 1614. 'ABOUT the beginning of October, MR JOHN OGILBIE, the *Jesuit*, was apprehendit in Glasgou. He had seduced fundry young men, and of the better fort of the people; and said Masse, in fundry places, within Toun. When the (ARCH) BISCHOP (OF GLASGOW)² challenged him for his hardnesse,³ he answered, that "he hoped to have more freedome, ere it were long." Wherupon, the *Bishop* buffeted him!

' About the beginning of November, THE (ARCH) BISHOP OF ST ANDREWS⁴ sone, Mr Alexander

¹ From the Adv. Library MS. ² John Spotswood, the well-known writer of the Church History. He was translated to the See of St Andrews on the demise of Archbishop Gladstones. ³ Hardihood; effrontery. ⁴ 'MR GEORGE GLADSTAINS, BISHOP OF ST ANDREWS, departed this life, in the Castle of St Andrews, on the 2d day of

Gledstanes, apprehended *Moffett*, a Messe-Preist, at St Andrewes; who was presented before the *Lords of Secret Counsell* upon the 10 of December, and was wairded in the *Cyfile of Edinburgh*. Some things the *Bishops* behoved to doe against PAPISTS, for honesties sake, least they should seeme to be advanced to persecute Ministers professing purity of Discipline and God's worship.

Upon the 6 of December, 13 or 14 of the Inhabitants of Glasgow were convicted for hearing of Masse, and Resetting a Masse-Preist, in Court holden be the *Bishope* and thrie of the (Council), who hed gotten Commissione, at the King's directione, to try. The brute¹ went, that they were to be headed, drawin, and quartered; but they were in no danger. OGILBIE, the *Jesuit*, was brought in to *Edinburg*, and examined be the *Bishop* and some of the *Lords of Secret Counsell*, to move to confesse where he had been resett, where he had said Messe, &c. He was not suffered to take sleep some nights and dayes together! His braines being lightsome, secrets were drawn out of him, but came not to the knowledge of the people. *Moffett*, the Preist, was examined be the *Bishop of St Andrewes* and his associats.

About the middst of Januare (1615), a Warrant was sent from THE KING to fine some of the receipters of OGILBIE the *Jesuit*, and hearers of Messes, in *Glasgow*; and to banishe some others of them out of the King's dominiones. About the end of Januar, THE KING sent down a course to be vsed in trying of JESUITS, their resetters, and hearers of Messe. This seemed rather a hindrance to the executioun of justice upon the persones presently guiltie, then to mean in earnest the repressing of Papists.

Upon the last of February, OGILBIE the *Jesuit*, one of the *Ogillbies of the House of Drummure*, was arraigned and pannalled before the *Proveist and Bailliffes of Glasgow*, the King's Judges in that part. At his Examination, before some of the *Counsell* and the *Bishop*, he being asked, whither THE KING, being excommunicat be THE POPE, the Pope might depose him, and loose his subjects from the Oathe of allegiance? Answered, and subscribed his answers with his hand, that he thought THE KING and his *Counsell* no competent Judges to him, in that matter; and therfor, would not directly answere them touching it, but before THE POPE, his ordinar Judge, and his substitutes! For this his declinator, he was convicted, in presence of findry Noblemen, appointed be THE KING to be present. He avouched, boldly, that he regarded not the Acts of Parliament nor THE KING's authority, soe farre as they were repugnant to THE POPES authority! Yett had he small courage when he come to the Scaffold—died heartlesse and comfortlesse—could not commend himselfe to God, at the Minister's desire—but did it after the desire of the hangman.

Some interpreted this Executione to have proceeded rather of a care to bless THE KING's Government, then of any sincere hatred of the Popish Religione. Some denied that it was done to be a terrour to the sincerer sort of the Ministry, not to decline THE KING's authority, in any cause whatsoever.² He was the first *Preist* or *Jesuit* that was executed, since the *Bassard Bishop of St Andrewes* was hanged.³

May. Many times before, because his face was disfigured, he had his night-bonnet drawn down to his nose, when the ministers of St Andrews enquired, "If they should pray for him publicly?" he answered, "It was not yet time!" Soe he was never prayed for publicly, but the same day that he departed; and that was done without his knowledge. Unwilling was he to die, or to suffer any honest man of the Ministrie near him, either to waken his conscience, or comfort him. At the desire of his wife and children, he subscribed some few lines, wherein he approved the present course, to procure the King's favour to them. His flesh fell off him in lumps. Notwithstanding of the great rent of his Bishoprick, he died in the debt of twentie thousand pounds. This man was both ambitious and covetous. Papists and hainous offenders were winked at, for bribes given to his servants and dependers. In his first diocesian Synod of Fife he sat in pomp with his velvet cushion before him, and his Clerk, Mr John Mitchellsonne, beside him.—Mr George Gladstains, BISHOP OF ST ANDREWES, was buried, upon the seventh of June, in St Andrewes. A cannabie (canopy) of blacke velvet was caried above the coffine, be foure men, and yett the corpes was not in the coffin, but buried soone after his death. Mr William Couper (BISHOP OF GALLOWAY) made his funerall-sermone, full of vile flattery and lyes, and knowne to be sae be the people, and therfor was he derided. It was reported that THE KING bestowed ten thousand merkes upon his buriell.—*Culderwood's Church Hist. MS. Adv. Lib.*

¹ Report; Fr. bruit.

² This had frequently taken place, as may be seen by referring to the former portions of this work.

³ Referring to the celebrated ARCHBISHOP JOHN HAMILTON, natural son of James, first Earl of

The anonymous author of 'THE HISTORIE OF KING JAMES THE SEXT'¹ shortly, but forcibly, narrates these transactions, in the following terms:—'DURING this same time and year, in the citie of *Glasgow*, ther hapnit a man, callit MR JOHNNE OGILBIE, *Jesuit*, to be apprehendit ther, be the *Archebischop* and his men, becaus he was tryit² sufficientlie to have sayed Mess^e ther, to sum inhabitants and citizeints of that toun; and famonie as wer tryit, wer all empreafonit in the *Castell of Dumbartane*, ther to remayne upoun ther awin expensis; and thereftir relaxit, and confynit for a pecuniall soume, for contravening the Act of Parliament; and fand caution, under great sowmes of money, ather³ of them, not to commit the lyk fault or cryme agayne. The *Jesuit*, in the meyne tyme, was convoyit to *Edinburgh*, and ther keapit in strait waird, and a gaird of men, be the space of eight dayis, with small sustentatioun; and compellit and withhaldin, perforce, from sleep, to the great perturbation of his brayne, and to compell him *ad delirium*!⁴ And being convoyit therfra to *Glasgow* agane, certen temporall questions wer objected unto him, as naymlie, geve⁵ THE KING was heid of THE KIRK, within his awin dominions, or nocht? To the whilk he answered, "No," &c., and so, consequently, to uther thrie. For the whilks, he was put to the cognitioun of a juré, and be them fund giltie of Treasoun and Leze-Majestie; and so was condemnit to be hangit to the death; whilk was also accomplisht.'

The enquiring reader is referred, for farther particulars, illustrative of this singular subject, to the various Collections of State Papers, and to the Histories of Scotland, especially *Spotswood's History*, where the matter is fully discussed by the Archbishop, who, it may be kept in mind, was one of the Assessors, and the leading examiner, in *Ogilvie's Trial*. The Editor appends to this remarkable TRACT the Examinations of all the persons suspected of having joined *Ogilvie*, in the celebration of Mass, &c., including the declinator of the *Jesuit* himself, which he has taken from an attested copy, preserved in the *Denmylne Collection of MSS.*, Advocates' Library.]

A TRVE RELATION OF THE PROCEEDINGS AGAINST JOHN OGILVIE, A JESUIT,

EXECUTED AT GLASGOW, THE LAST OF FEBRUARIE, ANNO 1615.

Containing fundrie SPEECHES vttered by him at his Arraignment,
and others, that afflist the Commissioners deputed for his
Triall: with all that passed at his Execution.

2 *Pet.* 2. 10. "Audaces, et sibi placentes, dominatum despiciunt, et non horrent dignitates convitiis inceslere."—*Tertul. adversus Hermo.* "Hermogenes hæreticus loquacitatem, facundiam existimat, et impudentiam constantiam deputat, et maledicere singulis officium bonæ conscientiæ iudicat."—*Cyprian de duplici martyrio.* "Non statim martyr est qui occiditur, occiduntur piratæ, et sicarii, supplicium non facit martyrem, sed causa."

EDINBURGH, printed by Andro Hart, anno 1615.

TO THE READER.

It hath beene thought needfull, that a true and perfect Relation of the whole proceedings against John Ogilvie, a Jesuit, lately executed at Glasgow, should bee published; as well for satisfaction of

Arran, who was hanged in Stirling, Apr. 1, 1570. See *Reliquiæ Divæ Andree*; *Keith's Catalogue of the Bishops*; the works of the *Rev Dr McCrie*, &c.

¹ Printed for THE BANNATYNE CLUB, Edinburgh, 1825. ² Proved. ³ Either; each. ⁴ This barbarous mode of extorting Confession had been prevalent in cases of *Witchcraft*, where the criminals were supposed to be under the direct dominion of Satan. Human nature could not long stand so exquisite a torture. The suspected parties were often driven into a state of *delirium*; and in many instances, they must have been glad to confess any thing which may have been proposed by their examiners, to escape from a life held by such a miserable tenure. ⁵ If.

those, who desire to be informed of his behaviour, during the time of his imprisonment, and at his arraignment and execution, as to obviate the misreports of the enemies of true Religion, who wrest and draw all things, without respect of truth, to their owne aduantage. It is knowne within these few yeeres, Henry Garnet and Edward Oldcorne, English Jesuites, being called in question, for that prodigious and damnable Powder-treason; although it was proved by cleare evidences and their own confessions, vnder their owne handes, that they were speciall authors and actors in it, and for the same were executed by publicke iustice, not in a corner, but in the open cities of London and Worcester; yet (such is the shamelesse impudencie of that sect) by printed apologies they haue bene iustified; and, which is more, inserted in a Catalogue of their Martyrs, set forth at Rome, anno 1608, by the licence and permission of their superiours. By which maner of doing, what may be expected, in this particular, at their handes, any man may easilie perceiue. Euery thing they are about to doe, (bee it neuer so great a mischief,) they cloake with the mantle of Religion: and if the statutes of the kingdome ouer-take any of them, either for practises against the King, or sowing the seed of rebellion amongst the subiectes, it must bee supposed (forfoothe) they suffer all for religion. Now were it so, and that, according to the law, for Masse saying they were punished to the death, they could not glorie in it, nor rightly challenge the crowne of martyrdom, their Masse beeing a vile and idolatrous seruice, flatly disagreeing with the faith of Christ, and trueth of the Gospell. But it is not so; albeit wee haue such statutes, for the restraint of Masse abomination within this kingdome, they are not able to instance any one, who, for the transgressing thereof, to this houre hath suffered. His Majesties proceedings with them haue bene more gentle: where death might haue bene inflicted, milder courses haue bene taken: imprisonment for some short time, and banishment forth of the realme, haue bene the sharpest punishments; so vnwilling was his Highnesse to force, or once to seeme to force, the consciences of any men whatsoever. And to say that which trueth is, if this vnhappy miscreant, who nowe hath his reward, had not discovered his traiterous minde, openly disauowing his Majesties authoritie, and stood to the maintaining of the Popes power, for dethroning kings, and freeing subjects from their oathes of allegiance, hee had felt no harder measure then others, although the circumstances of his fault were much greater; but his peruerse speeches, and insolent carriage beyond all credite, his sowing of doctrines tending to open rebellion, the hande of Iustice could not forbear. What was it, in the hearing of multitudes of people to affirme, 'that he would returne or abide in the kingdome, contrary to the lawes, and his Maiesties commandements? to value his Highnesse authoritie with his old hatte, and the Acts of our Parliament with a rotten figge? to say, it was treason to sweare with the oath of allegiance to the King, and that his Maiestie, by vsurping the Popes power, had lost the right of the kingdome?' Yet these, and diuers other more treasonable speeches, he vttered at his arraignment, which are set down in the processe, so far as could be remembred; for all could not be kept in mind. I am perswaded, the honest minded of those of his own profession will in their hearts condemne, and judge him iustly to haue suffered; for, praised be God, the Jesuits arte hath not so farre preuailed, in planting such opinions in the hearts of people, but euen amongst the aduersaries themselves, they are many that doe no wise approue their seditions and proditorie doctrines. And here, to all our Catholickes (they will be so called) in this kingdome, if nothing further may be obtained, and that still they wil lye in that superstition, wherein they haue bene nuzled, I wish at least so much wisdom, as to beware of Jesuites policies, and not to thinke their practises the cause of the Catholicke Church. It is not religion, as one hath well obserued, they strue for, but souerainitie. It will not content them to haue the Romish faith and ceremonies embraced; the crownes of kings, their scepters and subjects, must all be at the Popes deuotion. This is their speciall worke, and the effect of their blinde obedience, that speciall vowe, I meane, which they, besides the three vowes common to other orders, vow and sweare at their receptions. To this point runs all their seruice, to make the Pope the lord of all the earth; emperours, kings, and princes his dependants; to be remoued, altered, changed, depofed,

and killed, when it pleaseth his holines to giue commiſſion. Mariana, a Jeſuit, counteth it a whole ſome meditation for Kings, to think they may be killed, not only lawfully, but with glory and commendation to the doers. And Cæſar Baroniys, in his *Annales*,¹ recites a brieue of Pope Vrban the Second, ſent to Godfrede, Biſhop of Luca, wherein hee declares, that they are not to be eſteemed murderers, who, burning with the zeale of their Catholicke mother, kills excommunicates. The words of the Reſcript are theſe: *Non illos homicidas arbitramur, qui aduerſus excommunicatos, zelo catholice matris ardentes, eorum quoſlibet trucidaffe contigerit.* Bellarmine, that great Doctor, in his controuerſie, *De Romano Pontifice*,² hath theſe expreſſe words, *Papa poteſt mutare regna, et uni auferre atq. alteri conferre, tanquam ſummus princeps ſpiritualis ſi id neceſſarium fuerit ad animarum ſalutem.* That is, the Pope, as chiefe ſpiritual prince, may change kingdomes, and take them away from one, and giue them to another, if it be neceſſarie for the ſauing of ſoules. But Franciſcus Suarius, in his late booke intituled, *Deſenſio Fidei Catholice*, goes beyond all this, ſaying, that any, to whom the Pope permits the doing, may kill or expell the King, who is by ſentence deprived, or, which is all one, if he be declared to haue committed the crime, which by law deſerues that penaltie; and if the Pope neglect to giue power, the lawfull ſucceſſour may take the execution to himſelfe; and if he faile, the community of the kingdome ſuccedes in that right; to wit, to kill and expell him. His wordes are theſe: *Poſt ſententiam condemnatoriam regis, de regni priuatione, latam per legitimam poteſtatem, vel quod perinde eſt, poſt ſententiam declaratoriam criminis habentis talem penam ipſo iure impoſitam, poteſt ille qui ſententiam tulit, vel cui ipſe commiſerit, regem priuare regno, etiam illum interficiendo, ſi aliter non potuerit.* In the ſame place:³ *Si Papa regem deponat, ab illis tantum poterit expelli, vel interfici quibus ipſe id commiſerit. Quod ſi nulli executionem imperet, pertinebit ad legitimum in regno ſucceſſorem, vel ſi nullus inventus fuerit, ad regnum ipſum ſpectabit.* And that no man ſhould thinke this his priuate opinion, amongſt the approbations prefixed to the worke, yee haue, in *cenſura Academicæ Complutenſis*, this ſaide: *Nihil eſt in toto hoc opere à noſtro omnium ſenſu diſcordans, quum de hac re ſit omnium noſtrum eadem vox, idem animus, eadēque ſententia.* That is, there is nothing in all this worke, which is not agreeable with our mind, ſeeing herein we haue all one voice, one opinion, and one iudgement. Nowe if this bee the minde of all, it is high time they were all met with, and that *celeri pena*, by a preſent diſpatch. The knightes templars, erected, as is thought, by the princes of France, to preferue their conqueſt in the Holy Land, when, by keeping the rules of their institution in the firſt yeeres, they had purchaſed a great reputation of holynesse, and thereby drawne to themſelues an infinite wealth, became at laſt intolerable to kinges, and by one uniforme conſent, in the Councell of Vienna, were condemned, and the order aboliſhed. The order was of a longer ſtanding by much then our Jeſuites, but to kinges nothing ſo dangerous. The writers that mention them, do not agree vpon the cauſes of their generall hatred, and leaue the reader in ſuſpenſe, whether iuſtly they merited extermination or not: But poſteritie ſhall haue an aduantage in vnderſtanding the doctrine of Jeſuites by their printed bookes, and their ſeditious practiſes, by the attempts they haue made againſt the eſtates and liues of princes. *Secta hæc rebellis eſt, et nocens regibus.* A rebellious ſect they are, and hurtfull enemies to kinges, cruel aſſaſins, teaching diſloyaltie, and plotting the deaths of princes, which all Evrope, and thou, France, by the reſt, can teſtifie. O kinges, when ſhall ye awake, and take it in your harts to fulfil Gods decree? When ſhall yee vindicate your crownes from the vniuſt uſurpations of the prieſt of Rome? Shal the diſgrace and violence done to ſome of your ſacred perſons for euer thus lye vnauenged? We know it ſhall not: But God hath his day, who will patiently attend. In the meane time, I ſhall with the Catholikes of this kingdome to conſider and looke more deeply in their profeſſion, then they yet haue done. The myſteries of the Romiſh Religion are not ſeene at the firſt. Surely, ſome of our Papiſtes doe not know them, eſpecially that principle, which biudes

¹ Tomo 11. page 802.² De Pont. lib. 5. cap. 6.³ Lib. 6. cap. 4. num. 18.

them to obey the Pope against all the world. Suarius¹ hath taught them, that it is to be held as an article of faith, that the Pope hath power to depose kings; and that hee who denyes this power to the Pope, denyes the Catholike faith. By this is there no meane left to bee a Catholike, and remaine the Kings loyall subiect. To beleue the Popes power is such, is vndenyable treason: To refuse it, is to renounce Catholick religion; which last, I perswade myfelfe all true and naturall Scots will choofe, and of the choise shall it neuer repent them. I beseech God to open their eyes that are closed, and giue vs all to be contented with the Scriptures of God, which, by themselves, are able to perfect vs vnto euery good worke. Farewell.

A TRUE RELATION *of the Proceedings against IOHN OGILVIE, a Iesuit, especially at his Arraignment and Execution, which was at Glasgow, the last of Februarie, beeing on Tuesday, 1615.*

IOHN OGILVIE, alias WATSON, (for, according to the maners of his sect, he was *multinominis*, a man of diuers names,) came into Scotland at Martimes 1613, and making his residence for the most part of that winter in the north parts of Scotland, tooke his journey to England a litle before Easter. Where, giuing out to some of his countrey-men, that he had a supplication for some wrongs to present to his Majestie, hee attended the Court some two moneths; and falling in acquaintance with a gentleman of the West countrey, after his pretended businesse was done, or the occasion disappointed, he returned into Scotland with the saide gentleman, in the beginning of Iune thereafter. Vpon this familiaritie, and other intelligences giuen him, he came to Glasgow in August following; and finding a kinder receipt by certaine persons in that citie, (who for that crime haue since bene justly condemned,) then either he expected, or became them to haue granted, he made some haunt and resort thither at sundry times, till at last he was detected, and, by the direction of the Archbishop of Glasgow, who at that time kept his residence within the citie, apprehended and committed to prison. It was the fourth of October, a litle after foure of the clocke in the afternoone, when perceaued to bee ouertaken somewhat in company, his examination was differred to the morrow after. There was found with him two or three litle bookes, containing directions for confessioun; his budget being in the house where he kept at night, was conuoyed out of the way by one of his familiars, and presented the next day after, search beeing made by the magistrates of the citie, therein was found his Masse garments, chalice, altar, and the rest of that stuffe, with letters not fit at this time to bee divulgate. Amongst others, a war-rand to dispense with those who possesse church-livings, after this tenor, *quo ad dispensationem de bonis ecclesiasticis poteris dispensare ut retineant quæ possident, dummodo in pios usus aliquid impendant pro iudicio Confessarii dispensan-*

¹ *Propositio hæc, Papa potestatem habet ad deponendos reges hereticos et pertinaces, inter dogmata fidei tenenda et credenda est. Infra: Si abjuratur hæc potestas, abjuratur catholica fides. Lib. 6, cap. 8, num. 8.*

tis. Hee had in the famin maile diuerſe Reliques, peeces of wood, bones, and a tuſte of Ignatiſ hair, the founder of the Ieſuites order, which I thinke was his chiefeſt iewell.

In his examination, which was the next morning, before the Archbiſhop of Glaſgow, the Biſhop of Argyle, the Lords Fleming, Boyde, and Killyth, the Proueſt of the citie of Glaſgow, S. Walter Stewart and S. George Elphingſton, knights, he confeſſed his true name to be Iohn Ogilvie; that he was borne in the North of Scotland, and had bene foorth of the countrey 21 yeeres; that hee liued at Grats, in a colledge of the Ieſuites, and was receiued in their order; that he returned into Scotland by the command of his ſuperiour, and was to ſtay there vntill hee were recalled, if no other impediment ſhould offer. Being required to giue his oath, that he ſhould declare nothing but trueth, in ſuch things as ſhould be demanded; he answered, ‘that he would take oath, but with ſome exceptions, namely, if hee were demanded in any thing that touched his eſtate and life, or that might endanger theſe or any of them, he would not anſwere, likewise if the ſame tended to the preiudice of others.’ And when it was replied, that, his exceptions being admitted, his oath was as good as no oath, ſeeing any queſtions that could be propoſed, would concerne ſome of theſe, he was induced at laſt to giue a ſimple oath, which he did vpon his knees; and riſing vp from the ground, ſaid, ‘I will neither lie nor æquiuaocate, but what I ſay ſhalbe truth; and what I am asked, if I find it impertinent for me to anſwere, I will ſay nothing, or declare plainly I will not tel.’

Then being inquired of his comming in Scotland, the time and buſines he came to do, answered, ‘his buſines was to ſaue ſoules.’ Touching the time when he came into Scotland, answered, ‘In the Iune before:’ where hee was deprehended to æquiuaocate, notwithstanding of his proteſtation; for he meant of his laſt comming, and was asked concerning the firſt. But the time at that examination was not vnderſtood. Being inquired of the places where he had bene receiued, denied to tel; and if he had ſaid Maſſe in any place, he answered, ‘hee would not ſay any thing that might worke preiudice to himſelfe or others:’ and becauſe he had profeſſed that hee would not lie, the reply he commonly made to ſuch queſtions, was, ‘I will not tell you.’

The Lordes, finding him thus obſtinate, returned him to a chamber in the Caſtle, which was prepared for him, nothing lacking that was requiſite for one of his qualitie; and there hee was kept to the 8 of December. Now and then conference was giuen him by diuers of the Miniſters, in all which, heate and choler was eſpyed much to ouer-rule him. The ſchole diſtinctions he had in readineſſe, and thereby, when hee could not ſhift the argument, made ſemblance to euade. But of Holy Scripture (as he ſeemed not to be well acquainted there-

with), he made little reckoning, denying it still, after the Iesuites maner, to bee the onely rule of faith.

The 12 of December, he was presented at Edinburgh, before the Lords Commissioners, appointed by his Maiesties Miffiue for his examination and tryall; namely, the Lord of Binning, Secretary, the Lord of Kilfyth, Sir Gidion Murray, Thesaurer-deputie, and Sir William Oliphant, his Maiesteis Attorney-General; to whom he answered in al that was proponed, as of before at Glasgou. There, the letters intercepted with him were presented, which he acknowledged to be his; yet beeing demanded, touching certain particulars contained in them, he denied to giue ther lordships any satisfaction: And howbeit there was no perswasion omitted, that might haue induced any good nature to a better resolution, it auailed not. So as their lordships, perceiuing nothing but a pertinacious refusing in him to answer to points most reasonable, and withall apprehending his stay at Court, in the last summer, to haue bene for some worse seruice then he could speede in, determined, according to the power giuen them, to extort by torments another confession: which being intimated to him, and he replying that he was ready to suffer what they pleased, it was thought fit to proue him with the most easiest forme of tryall that could be used. And here, it being remembered, that in the tryal of some criminal persons, it was found that nothing helped more to find out the trueth of the faults wherewith they were charged, than the withholding of their naturall rest; it was aduised, that he should be kept without sleepe for some nights, which was accordingly done: and during which time it was perceiued, that hee remitted much of his former obstinacie, and falling to discouer certaine of his receauers in Edinburgh, gaue hope, that, by gentle usage, hee would bee drawne to giue their lordships contentment.

In the meane time, Christmasse approaching, at which time there is an ordinarie cessation from the affaires of Counsell and Sessioun, the Archbishop of Glasgou, beeing to repaire homewards, and vnwilling to discharge himselfe of that prisoner, till hee might at leasure worke him to a better minde, obtained the fauour of their L. to retaine him, in his companie, for a fourth-night after, or till hee shoulde returne himselfe to Edinburgh.

It pleased his Ma. in this time, whilest he was remaining at Glasgou, to send a Commission to the Archbishop of Glasgou, the Lord Bishop of Argyle, the Lord Fleming, S^r George Elphinston, and Iames Hammilton, Prouest of the citie of Glasgou, for trying the said Iesuit his opinion, touching his Highnesse royal power, and the Popes claimed iurisdiction, maintained by Bellarmine, Suarius, and others of that sort. The questions were these:

1. Whether the Pope be iudge, and haue power, *in spiritualibus*, ouer his Ma-

iestie, and whether that power will reach ouer his Maiestie, euen *in temporalibus*, if it be *in ordine ad spiritualia*, as Bellarmine affirmeth?

2. Whether the Pope haue power to excommunicate Kings, (especially such as are not of his church,) as his Maiestie?

3. Whether the Pope haue power to depose Kings, by him excommunicated; and in particular, Whether he haue power to depose the King his Maiesty?

4. Whether it be no murther to slay his Maiesty, being so excommunicated and deposed by the Pope?

5. Whether the Pope haue power to asfoyle subiects from the oath of their borne and natural allegiance to his Maiestie?

Vpon the 18 day of Ianuarie, the foresaid questions being red distinctly vnto him, and he required to declare his opinion thereanent, answered as followeth:

To the first, 'That hee thought the Pope of Rome Iudge to his Maiestie, and to haue power ouer him, *in spiritualibus*, if the King be a Christian:' and where it is asked, if that power will reach ouer his Maiestie, *in temporalibus*? hee sayes, 'hee is not obliged to declare his opinion therein, except to him that is Iudge in controversies of religion, which hee acknowledges to be the Pope, or some one hauing authoritie of him.'

To the second hee answereth, 'that the Pope hath power to excommunicate his Maiestie:' and where it is said, that the King is not of the Pope his church, hee saith, 'that all who are baptized, are vnder the Popes power.'

To the third, where it is asked, if the Pope haue power to depose his Maiestie, beeing excommunicated? Answereth, 'that hee will not declare his mind, except to him that is Iudge, in controuerfies of religion.'

To the fourth, whether it bee lawfull to slay his Maiestie, being excommunicated and deposed by the Pope? Answereth, *ut supra*.

To the fift, whether the Pope hath power to asfoile subiects from their borne and naturall allegiance to his Maiestie? Answereth, *ut supra*.

In all these Articles, he was particularly reasoned with by the Archbishop of Glasgou, Mr Robert Boyd, Principal of the College, a man of rare erudition, and Mr Robert Scot, one of the Ministers of the citie; where it was also signified vnto him, that it concerned him in no lesse then his life, what answere he should make; if he should stand obstinate in these he had giuen, he might know what fauour was to be expected for his other crimes. Not the lesse, ratifying all that formerly was said, hee added this further, 'that he condemned the oathes of supremacie and allegiance proponed to be sworne in England,' and would needes haue the writer to insert those wordes; to all which hee put his hand, subscribing thus,

IOHANNES OGILVEUS, *Societatis Iesu*.

These answeres beeing sent to his Majestie, vnder the testification of the fore-

saide Commiſſioners, his highneſſe gaue order to the Lordes of the Priuie Counſell, for his triall; which was appointed to be at Glaſgow, the laſt of Februarie. Immediately after, the Archbiſhop of Glaſgow directed the Proueſt and Baylies of the citie vnto him, to ſignifie that Tueſday following was appointed for his arraignment; and that hee would not bee accuſed for Maſſe ſaying, or any thing elſe that concerned his profeſſion, but for the anſwers that hee had made to the demands propoſed to him by his Maieſties Commiſſioners. They declared alſo, that if hee ſhould, vpon better reſolution, recall thoſe anſweres, and apply himſelfe to giue his Maieſtie ſatiſfaction, in other points, which of deutie hee was obliged vnto, the ſaid Archbiſhop would uſe his credite with his highneſſe and the Lordes of the Priuie Counſell, for his ſafetie. His anſwere was, ‘ that he thanked his lordſhip, for the good will and kindneſſe offered; but he was ſo little minded to recall any thing hee had ſaid, as when hee came to the place, hee would make a commentarie vpon his anſweres.’

The Miniſters of Glaſgow, accompanied with Maſter Williame Struthers, one of the Miniſters of Edinburgh, did alſo viſite him, ſome two dayes before, aduiſing him to the ſame purpoſe, and offering him their beſt counſell and comfort. His anſwere was, ‘ That he had reſolved what to doe; and if hee ſtoode in neede of their comfort, hee ſhoulde advertiſe.’

The Earle of Lowthiane, truſting by conference to bring him to a better minde, went vnto him at diuers tymes, uſing many perſuaſions to draw him from his obſtinate courſe: but nothing could preuaile with him, as in the proceedings ye ſhall perceiue.

THE ARAIGNMENT of IOHN OGILVIE, on Tueſday the laſt of Februarie, in the town-houſe of GLASGOW, before Iames Hammilton, Proueſt of Glaſgow, Iames Bell, Coline Campbell, and Iames Bradwood, Baylies of the citie, Juſtices appointed by ſpeciall commiſſion for that buſines, by the Lordes of Priuie Counſell. The foreſaid IUDGES being aſſiſted by the honourable LORDS there preſent:—Iohn Archbiſhop of Glaſgow, James Marques of Hammilton, Robert Earle of Lowthiane, William Lord Sanquhar, Iohn Lord Fleming, Robert Lord Boyde, and Sir Walter Stewart, Baylie deputie of the regalitie of Glaſgow.

ON Tueſday, the laſt of Februarie, a litle after 11 of the clocke, in the forenoone, the Court beeing ſet, Mr William Hay of Baro, Commiſſar of Glaſgow, deputed by ſpeciall commiſſion from Sir William Oliphant of Newtoun, his Maieſties Atturney Generall, produced the Inditement following: together with the citation uſed againſt thoſe who were to paſſe vpon the iurie, and the roll of their particular names, ſubſcribed with his hand, according to the cuſtome obſerued in thoſe caſes.

THE INDITEMENT of JOHN OGILVIE, IESUIT, after the forme of the law of Scotland.—JOHN OGILVIE, by your subscription, a Priest of the late execrable order of IESUITS, you are indited and accused, That, forasmuch as God, the author of all righteous gouvernement, hauing established Kings and Magistrats his lieutenants vpon earth, for repressing of violence, oppression, and vice, and the promoting of pietie and justice, hath, in his particular grace and fauor, blessed this countrey with a more ancient, iust, and permanent descent of lawfull Kings, than any other nation of the world; and extended our felicitie beyond the happines of our antecessors, by the justice, wisdom, and clemencie of his Maiesties prosperous reigne; and hath not onely rewarded his Maiesties zeale and righteousnes with wealth and peace, but also honoured and strengthened him with the accession of the most mightie and flourishing kingdomes of England, France, and Ireland. Which visible fauours, proceeding directly from Gods most bountifull hand, moued the whole Estates of this kingdome, assembled in the Parliament holden at Perth, the 9 of Iulie, 1606, To acknowledge his Maiesties soveraigne authoritie, princely power, royall prerogative, and priuilege of his crowne, ouer all estates, persons, and causes whatsoever, within the kingdome: And all in one voice, faithfully promise to maintaine, defend, obey, and aduance the life, safetie, honour, dignitie, soveraigne authoritie, and prerogative royall of his sacred Maiestie, and priuiledges of his crowne: And to withstand all persons, powers, and estates, who should presume, preasse, or intend any wayes to impugne, hurt, or impair, the same: As also, his Maiestie, with aduise of the whole estates of this kingdome, in the Parliament holden at Edinburgh, the 22 day of May, anno 1584, ratified, approued, and perpetually confirmed, his Majesties royall power and authoritie ouer all estates, as well spiritual as temporall, within this realme: And statuted and ordained, that his Highnesse, his heyres and successours, by themselves and their Counselles, were, and in all times comming should bee, Iudges, competent to all persons, his Highnesse subjectes, of whatsoever estate, degree, function, or condition that euer they be of, spiritual or temporall, in all matters wherein they or any of them should be apprehended, summoned, or charged to answere vnto such things as should be inquired of them, by our said soveraign Lord and his Counsell: And that none of them, who should be apprehended, called, or summoned, to the effect foresaid, should presume or take in hand to decline the iudgement of his Highnesse, his hayres and successours, or their Counsell, in the premisses, vnder the paine of treason: And likewise, by the 48 Act of King Iames the First his Parliament, and diuers other Parliaments thereafter, it is ordained, that all the King his lieges liue and be gouerned vnder the Kings lawes and statutes, and vnder no lawes of other countries and realmes, vnder the paines of treason, and others; (as is) particularly exprest in the Acts before mentioned,

and other lawes of this kingdome. Notwithstanding whereof, it is of trueth and veritie, that you, hauing renounced your naturall allegiance and deutie to your natie and righteous King, and cast off all reuerence, respect, and obedience to his foueraigne authoritie and lawes, and dedicated your mind and actions to the vnlawfull obedience of forraine powers, aduersaries to his Majestie; and resolving, so farre as in you lieth, to seduce his Majesties subiectes from the faith and allegiance due to his Majestie, repaired to his countrey, in the moneth of Iune last past, or thereabout, and by your conferences, intifements, auricular confessions, Masse-saying, and other subtille and craftie meanes, indeuoured your selfe, not onely to corrupt many of his Maiesties lieges, in religion, but also to peruert them from their duetifull obedience due to his Majestie, till you were discovered and apprehended by the Archbishop of Glasgowe; who, with diuers his Maiesties Counsellors, and others his good subiectes, used all Christian and charitable meanes to bring you to the sense of your hainous offences, and desire of amendment thereof: But they, losing all their well-intended labours, were (in respect of your peruerse obstinacie) commanded by his Majestie, to enter to your examination, and the tryall of your hainous crimes and transgressions. And especially, the faide Archbishop of Glasgowe, and many others of good ranke and qualitie adjoined to him, by his Majestie, for your examination, hauing, vpon the 18 day of Ianuarie last, called you before them, to examine you vpon some particuler interrogatories, prescribed by his Majestie to be demanded of you, as directly concerning his Majesties moste sacred person, life, crowne, and estate. And chiefly, you being demanded by them, whether the Pope hath power to depose Kings, being excommunicated? And in particular, if he haue power to depose the Kings Majestie, our foueraigne, being excommunicated by him? You answered, treasonably, that you woulde not declare your mind, except to him that is iudge in the controuerfies of religion, whom (by your answere made to the latter part of the first interrogatorie, demanded of you that day) you declared to be the Pope, or any hauing authoritie from him: Albeit, by the Acts of Parliament, and lawes of this Realme, made in the yeeres of God 1560 and 1567, it is statuted and ordained, that the Bishop of Rome (called the Pope) shall haue no iurisdiction nor authoritie within this Realme, in any time comming: And thereby, not onely declined treasonably his Maiesties iurisdiction, allowing of the Popes iurisdiction, which is discharged by Acts of Parliament, as said is; but hath committed most damnable and high treason, in not acknowledging that the Pope hath no power to depose his Maiestie, who, holding his crowne and authoritie absolutely, fouerainly, and immediatly of God, may not be deposed by any earthly person, power, or authoritie. And thereafter, being demanded, If it be lawfull to slay his Majesty, being excommunicated and deposed by the Pope?

you answered, *ut supra*; which was, that you would not declare your mind till you were before the Pope, or others having authoritie from him: Thereby, not onely declining, treasonably, his Maiesties iurisdiction and authoritie royall; but by your not answering clearly, that it is altogether vnlawfull, damnable, and diabolicall, once to thinke that it is lawfull to slay his most sacred Majestie, you haue committed most hainous, pernicious, and vnpardonable treason. And lastly, being demanded, If the Pope had power to assoile his Majesties borne subiectes from their naturall allegiance? you answered, *ut supra*: and thereby, both declined, treasonably, his Highnes iurisdiction and authoritie royall, in refusing to answere before his Maiesties Counsellers and Commissioners foresaid, in one matter, meerely concerning his royal power ouer his people, and their subiection to his Maiestie: and also committed wilfull and detestable treason, in not acknowledging, professedly and presently, that none on earth had power to assoile his Maiesties subiects from their naturall subiection and allegiance to him. But that it may bee knowne that your treason proceeded of forethought felonie and obstinate resolution, you freely and vnrequiredly did adde to your foresaid answeres, this damnable conclusion, that you condemned the oathes of supremacie and allegiance giuen to his Maiestie, by his subiects, in his Dominions; wherby it is apparent, that your erand to this Countrie hath beene, to infect his Highnesse subiects with the poison of your pestilent and treasonable opinion foresaid, to the subuerfion of Religion, ouerthrow of his Maiesties authoritie and crown, and destruction of his most sacred person. And albeit, the course of all his Maiesties life and reigne, hath manifested how vnwilling hee hath euer beene to use the feueritie of his Lawes against those who hath said and heard Masse, and otherwise controuened the Acts of Parliament made against idolatrous papistrie, and practisers thereof, within this Kingdome; desiring rather to reclaime them, by instruction, from their errorrs, to the knowledge and profession of the trueth: And when he found them obdurat, and of desperate resolution, relieuing the countrie of the dangerous progresse of their courses, by their imprisonment and banishment, whereof you had such experience, in the persones of your owne complices, condemned for their manifest crymes, as might verie probable haue made you to haue expected the like; if anie memorie of your natiue duetie and borne allegiance had possessed your mind: But you, beeing altogether destitute thereof, by the three last articles of your Depositions aboue written, you haue so plainly discouered, that you professedly approue the meanes, and wish the effect, of the ouer-throwe of his Maiesties estate, the destruction of his Highnesse person, and seduction of his natiue subiectes from their subiection and duetifull obedience; that thereby, and by euery one of your foresaid answeres, you haue committed moste hainous, detestable, and vnpardonable treason, and deseruedly

incurred the most rigorous paines therof to be executed vpon your body, lands, and goods, with all extremities, to the terrour of others.

THE Inditement being read, Maister William Hay, substitute for his Maiesties Attorney, opened the same, to the effect following.—Albeit the Inditement of it selfe be cleare enough, and representeth sufficiently to my Lordes Iustices, their honourable Lordships heere assisting, and to your selfe, Iohn Ogilvie, who standes there accused, the weight and gravitie of the crime by you committed, yet I shall resume it to you in few words, that your answeres may be the more distinct, and without mistaking.

You are not accused of saying Masse, nor of seducing his Maiesteis subjectes to a contrarie religion, nor of any point touching you in conscience, properly; but for declining his Maiesties authoritie, against the lawes and statutes of the land, and for maintaining treasonable opinions; such as we, of this Realme, haue not heard by any auowed. The statutes, mentioned in your Inditement, make it treason not to answere the Kings Maiestie, or his Counsell, in any matter which shall be demanded: You beeing examined by my Lord Archbishop of Glasgow, and other honourable persons adioyned to him, by his Maiesties special Commiffion, refused to answere vnto diuers interrogatories proponed to you by their Lordships; and, at the same time, professedly auouched the Pope of Rome his iurisdiction, which, by the Lawes of the countrie, is many yeeres since plainly discharged: Therefore, haue you incurred the penaltie contained in the statutes, and the same ought and should be executed vpon you.

It is further laid vnto your charge, that you, being demanded in the particulars, namely, Whether the Pope hath power to depose the Kings Maiestie, our soueraigne? Secondly, Whether it be lawfull to slay his Maiestie, being deposed by the Pope? Thirdly, Whether the Pope hath power to assoile his Maiesties subjects from their naturall allegiance, or not? You denied to giue any answer, touching any of these points, except yee were inquired thereof by the Pope, or others hauing authoritie from him; and so not acknowledging that his Maiesties crowne and authoritie is held immediately and souerainely of God, the author of all gouernement; that it is detestable, once to thinke, that his sacred Maiestie may bee lawfully killed; and that no man hath power to assoile his Maiesties subjects from their naturall allegiance to his Highnesse: You haue, in these points, and euery one of them, committed most hainous treason; for the which, what you say in your own defense, I see not. And yet further, that it may be seene, how desperate your resolution is, in al these points, althogh you were not required concerning the oaths of supremacy and allegiance giuen to his Maiestie by his subiectes, ye freely, and out of your owne motiues, condemned these oaths,

as impious and vnlawfull. Thereby hath it appeared, what a wicked and treasonable mind you foster against his Maiestie, our soueraigne. If you should deny it, heere are your answeres, subscribed with your owne hand, which ye cannot but acknowledge; them I desire to bee read, as likewise the feuerall statutes of Parliament, which you are alledged to haue transgressed; and thereafter, since his Maiestie is pleased that the ordinarie course of tryall be kept vnto you, you shall haue libertie to say for your selfe, either against the relevancie of the Inditement, or verification produced, what you thinke best.

Then were read the statutes of Parliament, mentioned in the Inditement, and the said Iohn Ogilvies answeres to the demands proponed vnto him; which he acknowledged for his owne, and the subscription thereto subioyned: after which, hauing licence of the Court to say what he coulede for himselfe, he spake to this effect:—‘ First, vnder protestation that I doe no way acknowledge this iudgement, nor receiue you, that haue that Commission there produced, for my iudges, I deny any point laid against me to be treason: for if it were treason, it would bee treason in all places, and in all kingdomes; but that,’ saith he, ‘ is knowne not to be so. As for your Actes of Parliament, they are made by a number of partiall men, the best of the land not agreeing with them, and of matters not subiect to their forum, or iudicatorie, for which I will not giue a rotten figge!’

‘ Where I am thought an enemy to the Kings Maiesties authoritie, I knowe none other authoritie he hath, but that which he received from his predecessors, who acknowledged the Pope of Rome his iurisdiction. If the King,’ saith he, ‘ will be to me as his predecessors were to mine, I will obey and acknowledge him for my King; but if he doe otherwise and play the runnegate from God, as he and you all doe, I will not acknowledge him, more than this old hatte!’

Heere the Archbishop of Glasgowe interrupted his speech, desiring him to deliuer his mind in a greater calme, and with more reuerent speeches of his Maiestie (for he vttered those things in a vehement passion, and as one transported with fury); hee remembered him, that hee was accused vpon his life, before iudges that were authorized by his Maiesties Commission: to decline the iudgement, or raile against his Maiesties authoritie, was bootlesse, and in a man of his profession, being an Ecclesiasticke, very scandalous. He should rather take another course to amend what he had offended in, and recall his former answeres, if they had not proceeded from a deliberate purpose; or if hee were resolute to maintaine them, to doe it with reason, and in a moderate sort; that this were his best, either for iustifying himselfe, and the opinions he held, or for mouing the Iudges, and their Lordships that were assisting, to commiserat his case: he aduertised him withall, to be more temperate in his speeches concerning his Majestie, otherwise he would not be licenced thus to offend.

To this, Ogilvie made some litle answer, 'That hee would take the aduertisement, and speake more coldly:' howbeit, hee would neuer acknowledge the iudgement, nor thinke they had power to sit on his life, but said, 'And for the reuerence I doe you, to stand bare-headed before you, I let you know it is, *ad redemptionem vexationis, et non ad agnitionem Iudicii*.

The Aduocate here insifted, that seeing all his answeres tended to decline the iudgement, and that hee brought no reason why the Inditement should not goe to a tryall, that the Iurie should be chosen and sworne at the Barre, according to the custome.

THE NAMES OF THE IURIE.

Sir Geo. Elphinston of Blythwood,	Hew Crawford of Iordane-hill,	John Dunlop of Powmilne,
Sir Thomas Boyd of Bonethaw,	John Carfchore of that Ilk,	John Stewart, burges of Aire,
Sir J ^r Edmeston of Dunraith, elder,	Hew Kennedy, prouest of Aire,	John Dumber, burges there,
James Murehead of Lachope,	William Makarrel of Hill-house,	James Iohnston, burges there,
James Robertson of Ernock,	James Blaire, baylie of Aire,	John Cunningham of Rawes.

It was allowed the prisoner to challenge any of the fore-named persons, and to oppose vnto their admiffion: who said, 'He had but one exception for them all: they were either enemies to his cause, or friendes; if enemies, they could not bee admitted vpon his triall, and if they were his friends, they should stand prisoners at the Barre with him.'

The Iurie, being knowne to be all discrete and substantiall persons, were instantly sworne and admitted.

Then was the Inditement read againe, in the hearing of the Iurie, and the evidences shewed them for verification thereof, which ofbefore were produced. And the prisoner, beeing of new remembred to say what hee woulde for himselfe, for the better information of the Iurie, spake these things following:

'I wish these Gentlemen to consider well what they doe. I cannot bee tried nor iudged by them; and whatsoeuer I suffer here, it is by way of iniurie, and not of iudgment. *Iniuria est, non iudicium*. I am accused of treason, bot haue done none offence, neither will I begge mercy.'

'This is strange,' sayeth the Archbishop, 'you haue done none offence, and yet you are come in his Maiesties kingdome, and hath laboured to peruert his Highnesse subjects; both of these are against the law: In this haue ye not offended?'

'Not,' he answereth; 'I came by commandement, and if I were even now fourth of the kingdome, I should returne: neither doe I repent any thing, but that I haue not been so busie as I should, in that which yee call peruerting. I hope to come to Glasgowe againe, and to doe more good in it. If all the haire of mine head were priestes, they should all come into the kingdome.'

'And doe you not,' sayeth the Archbishop, 'esleeme it a fault to goe against the King his commandement, especially in this point of discharging you his king-

dom. If a King haue any power within his kingdome, it seemes hee may rid himselfe and his countrey of those with whom he is offended; and it fauoures of great rebellion to say otherwise.'

To this Ogilvie replied, 'I am a subiect as free, as the King is a King: he cannot discharge me, if I be not an offender, which I am not.' And being asked, for what offences he might be discharged by the King? Answered, 'in the cases of theft and murder.'

'All this while,' said the Archbishop, 'you come not to answer any thing to the points of your Inditement. Why did you decline his Maiesties authoritie, and refused to shew your opinion anent the Pope his power in deposing Kings, and loosing subiects from their oath of allegiance? And when it was asked you, if it were lawfull to slay the King, being deposed and excommunicated by the Pope, which any loyall hearted subiect will abhorre to think of, why did you not simply condemne it as vnlawfull? For in that you doe not condemne it, you shewe your selfe of the opinion of the rest of your sect, who in their bookes maintaine, that it is both lawfull and commendable to slay Kings, if the Popes commission goe forth once for it.'

'For the declining of the Kings authoritie,' sayeth he, 'I will doe it still in matters of religion, for with such matters hee hath nothing to doe; neither haue I done any other thing, but that which the Ministers did at Dundie; they would not acknowledge his Maiesties authoritie, in spirituall matters, more than I; and the best Ministers of the land are still of that minde, and if they be wise, will continue so.'

The Archbishop replied, 'that he was mistaken, both in the place and matter; for it was not at Dundie, but Aberdein, where eight Ministers, meeting to a General Assemblie, contended not against the Kinges authoritie, but that the Assemblie called to that place and time, could not be discharged by his Maiesties Commissioner: Neither should the fact of a few, taken at the worst, be esteemed the deed of the whole. These haue bene punished for their offences, and some of them haue confessed their errour, and bene graciously pardoned by his Maiestie: All good Ministers professe otherwise, and our religion teacheth us to acknowledge his Maiestie, our onely supream iudge, in all causes. The King is keeper of both Tables, and his place beares him not onely to the ruling of his subiects in iustice, and preferuing equitie amongst them; but euen to maintaine religion and Gods pure worship, of which he should haue principal care. Your lord, the Pope, hath not onely denied this authoritie to Kings, which God giueth them, but usurpeth to himselfe a power of deposing and killing, when he is displeased; and it were the lesse to be regarded, if this his usurpation had gone no further then your pennes; but you haue entred, by this pretended right, the throats of the

greatest Kings, as your practise vpon the two last Henries of France beares witnesse. You are not able to lay such imputation vpon vs, nor our profession, which teaches, that, next vnto God Almighty, all men are bound to feare, serue, and honour their Kings. But what answere you, touching these demandes? Hath the Pope power to depose the King? Or is it not murther to kill him, being deposed by the Pope?

‘ I refused of before,’ said hee, ‘ to answere such questions, because in answering, I should acknowledge you iudges in controuersies of religion, which I doe not. I will not cast holy things to dogges.’

‘ And is it,’ said the Archbishop, ‘ a point of faith, that the Pope may depose his Maiestie? Or do you think it a controuersie in religion, Whether his Maiestie (whom God saue) may be lawfully killed or not?’

To this Ogilvie replied, ‘ It is a question amongst the Doctors of the Church, and many hold the affirmatiue, not improbably: A Councill hath not yet determined the point; and if it shall be concluded by the Church, that the Pope hath such power, I will giue my life in defence of it, and if I had a thousand liues, I would bestowe them that way, if they will make an article of faith of it.’ Being vrged to declare his owne opinion, especially in that point, whether it were murther to kill his Maiestie, being deposed by the Pope, he answered, ‘ that he would not say it were vnlawfull, though he should saue his life by it.’ Then going on with a long speech of the Pope his power, affirmed the King to be subject to him, by the vertue of Christes saying to Peter, *Pasce oves meas*. ‘ That if the King offended against the Catholicke Church, the Pope might punish him aswell as a shepheard or the poorest fellow in the countrey. That in abrogating the Popes authoritie, the estates of Parliament had gone beyond thair limites, and that the King, in vsurping the Popes right, had lost his owne. *Nam qui rapit jus alienum,*’ sayeth hee, ‘ *perdit jus ad suum.*’

Being asked touching the oath of allegiance, why he did condemne it, and the famine being read vnto him, he said, ‘ It was a damnable oath, against God and his trueth, and that it was treason to sweare it; because it brought the Kings person and state in danger; since this kingdome,’ sayeth he, ‘ was Christian, the Popes supreme power was alwayes acknowledged; this being cast off, (as we see in the Act of your Parliament,) against all reason and conscience, and subiectes forced to sweare to a matter so vnlawfull, what maruell that attemptes and dangerous courses be taken against him? *Iustissima lex est, ut quæ agit aliquis, talia patiatur.* But would the King leaue off his vsurping vpon the Pope, hee might liue without feare, aswell as the King of Spaine, or any other Christian prince.’ And with this hee intermixed some speeches, of his owne seruice, and the seruice of other Iesuits done to his Maiestie, whereof hee saide, ‘ Neither Bishop, nor

Minifter, nor all the Bifhops and Minifters in his Maiefties kingdomes, had done or could doe the like.’

The further hee proceeded in fpeaking, his fpeeches ftill grew to bee the more intollerable ; therefore the Archbifhop of Glasgou, willing him to make an end, did clofe all with fome wordes to the Iurie, to this effect. Gentlemen, and others, who are named vpon this Affife, though I minded to haue faide nothing, but fitten heere a witneffe of the proceeding, I haue beene forced, by his proud and impudent fpeeches, fomewhat to replie ; and muft, with your patience, fay a little more. It is this fame day, two and twentie weekes paft, that this prifoner fell into mine handes ; fince that time hee hath had leifure to thinke enough what courfe was fitteft for himfelf to take, for fatisfying his Maieftie, whome he had offended : neither hath he lacked counfel and aduife, the beft that we could giue him. Befides, hee hath found on our parte nothing but courteous dealing, and better intertainement then (I muft now fay it) hee hath deferued. Mine owne hopes were, that hee would have followed another courfe then I fee hee hath taken, and not ftande to the anfweres which hee made to thofe demandes, which were moued vnto him by his Maiefties Commiffioners, and you haue feene : But if his anfweres at the firft were treafonable, they are now fo little bettered, as in all your hearinges, hee hath vttered fpeeches moft deteftable, made a commentarie worfe then the text was, and fhewed himfelfe to carrie the minde of an arrant and desperate tratour. You perceiue, he obfcures not his affection towards the Kinges Majeftie, our foueraigne, in all his fpeeches ; preferring the Pope to his Majeftie : And, which is more intollerable, affirmeth the Kinges Maieftie to haue loft the right of his kingdome, by vfurping vpon the Pope. Hee will not fay it is vnlawfull to kill his Maieftie ; hee fayeth, it is treafon for fubiectes to fwear the oath of allegiance ; and meaneth fo much, in his laft wordes, as the Kinges Maiefties life and eftate cannot bee affured, except hee render himfelfe the Popes vaffall.

Thus hath hee left you little to doe : except that his Majefties pleafure is, the ordinarie forme bee kept with him, you fhoulde neuer neede once to remoue : all his fpeeches haue beene fo ftuffed with treafon, that I am fure the patience of the Noble-men, and others heere prefent, hath beene much prouoked.

In al that he hath faid, I can marke but two things alledged by him, for the Popes authoritie ouer Kinges : the wordes of our Sauour to Saint Peter, *Pafce oues meas*, Feede my fheepe ; and the fubjection of Kinges, efpecially of our Kinges, fince the kingdome became Chriftian, to the Pope. For the wordes of our Sauour, howe little they ferue his purpofe, I haue no neede to tell you. To feed the fheepe of Chrift, is not, I hope, to depofe Kinges from their eftates, nor to inflame the heartes of fubiectes againft princes : much leffe to kill and difpatch

them : Wee are better taught then to bee deceiued with such glosses. Saint Peter made neuer that sense of those wordes, and teacheth vs a farre other doctrine, in his first Epistle, fift chapter, and second and third verse.

I will not spende time with such purpose, onely this I muste saye, that whatsoever was Saint Peters prerogative, the Pope of Rome hath nothing to doe with it : for hee cannot bee Saint Peters successour, that hath forsaken his doctrine, and gone against his practise directly, both in that and other points of Christian faith. And for the antiquitie of his usurped power, I may justly say, that Master Ogilvie is not well seene in antiquitie, or then speaketh against his knowledge, when he saith, that this power of the Pope was euer acknowledged by Christian Kinges : The Bishops of Rome, for many yeeres, made no such claime, neither did Emperours or Kinges euer dreame of such subjection : Long it was ere the Pope of Rome came to the height of commanding Kinges, and not till hee had oppressed the church, vnder the pretext of Saint Peters keyes, bearing downe all the Bishops within Christendome : which hauing done, then hee made his inuasion vpon princes, and that by degrees. The histories of all ages make this plaine, and the resisting hee found by Kinges in their kingdomes, testifieth that they neuer acknowledged his superioritie. Of our owne, howbeit, as wee lye farre from his seat, so had wee lesse businesse, and fewer occasions of contradiction ; yet can I make it seene, in diuers particulars, when any question fell out anent the prouision of Bishops and Archbishops to their places, the Bulles of Rome were so little respected, as the Kinges predecessours haue always preferred and borne out their owne choice, and the interdictions made upon the realme, by these occasions, not without some imputation of weaknesse to the Sea Apostolicke, haue beene recalled. The superstitions of Rome were amongst vs last embraced, and with the first, by the mercies of God, shaken off : Whatsoever you bragge of your antiquitie, it is false, both in this and all the pointes of your profession else, which I could cleare, if this time or place were fitting. But to you of this Iurie, I haue this only more to say, you are to inquire vpon the veritie of the Inditement, whether such and such things as are alledged to be committed by him, haue beene so or not ? You haue his subscription, which hee acknowledgeth ; you heare him selfe, and how hee hath moste treasonably disauowed his Majesties authoritie : It concernes you onely to pronounce, as you shall find verified by the speeches that you haue heard, and the testimonies produced. For the rest, the Iustices knowe sufficiently what to doe, and will serue God and his Majestie, according to the Commission giuen them.

Maister William Hay, Aduocate for his Majestie, asked instrumentes vpon the prisoners treasonable speeches vttered in the hearing of the Iurie, and his ratification of the former answeres made to his Maiesties Commissioners : Likewise, for

the further clearing of the Inditement, repeated the Actes of Parliament mentioned in the said Inditement, with the Act of Priuie Counsell, made anent his Maiesties supremacie, and the oath of allegiance: And desired the Iurie deeply to weigh and consider the peruerse and diuelish disposition of the partie accused, to the effect they might, without scruple, proceede in his conuiction. And according to his place, protested for Wilfull Errour, if they should acquite him of any point contained in the saide Inditement.

[VERDICT.] The persons named vpon the Iurie remoued to the higher house, which was prepared for them; and hauing elected Sir George Elphinstone chancellor, all in one voice, found the prisoner GUILTY of the whole Treasonable crimes contained in the Inditement.—[SENTENCE.] Which being reported by the saide Sir George Elphinston, and confirmed by the whole Iurie, then returned into the Court, Judgement was giuen, by direction of the Iustices, That the saide Iohn Ogilvie, for the Treasons by him committed, should be HANGED and QUARTERED.

THE Archbishop of Glasgow demanded, if Ogilvie would say any thing else?

Ogilvie answered, ‘No, my lord, but I giue your lordship thanks for your kindnesse, and will desire your hand.’

The Archbishop said, ‘If you shall acknowledge your faulte done to his Maiestie, and craue God and his Highnesse pardon, I will giue you both hand and heart, for I wish you to die a good Christian.’

Then Ogilvie asked, ‘If he should be licensed to speake vnto the people?’

The Archbishop answered, ‘If you will declare, that you suffer according to the Law, justly for your offence, and craue his Maiestie pardon for your treasonable speeches, you shall be licensed to say what you please; otherwise you ought not to be permitted.’

Then saide hee, ‘God haue mercie vpon mee!’ And cryed alowd, ‘If there be heere anie hidden Catholickes, let them pray for me; but the prayers of hereticks I will not haue.’ And so the Court arose.

[OGILVIE’S *conduct at the time of his EXECUTION.*]

AFTER iudgement was giuen, by the space of some three houres, he remained in the place where he was conuicted, hauing leasure graunted him to prepare himselfe for death. Hee continued a while vpone his knees at prayer, with a colde devotion; and when the houre of execution approached, his handes being tied by the executioner, his spirits were perceiued much to faile him. In going towards the scaffold, the throng of people was great, and he seemed much amazed; and when he was vp, Master Robert Scot and Master William Struthers, Ministers, very grauely and christianly exhorted him to a humble acknowledge-

ment of his offence, and if any thing troubled his mind, to disburthen his conscience. In matters of religion, they faide, they would not then enter, but prayed him to resolute and settle his minde, and seeke mercie and grace from God, through Iesvs Christ, in whom onely saluation is to bee found. Ogilvie answered, ‘ That he was prepared and resolute.’ Once he said, ‘ That he died for religion ;’ but vttered this so weakly, as scarce he was heard by them that stood by vpon the scaffold. Then addressing himselfe to execution, he kneeled at the ladder foot, and prayed. Master Robert Scot, in that while, declaring to the people, that his suffering was not for any matter of religion, but for haynous treason against his Maiestie, which hee prayed God to forgiue him. Ogilvie, hearing this, faide, ‘ He doeth me wrong.’ One called Iohn Abircrumbie, a man of little wit, replied, ‘ No matter, Iohn, the more wrongs the better.’ This man was seene to attend him carefully, and was euer heard asking of Ogilvie some token before his death ; for which, and other businesse he made with him, he was put off the scaffold.

Ogilvie ending his prayer, arose to goe vp the ladder, but strength and courage, to the admiration of those who had seene him before, did quite forsake him ; he trembled and shaked, sayng, he would fall, and could hardly bee helped vp on the top of the ladder : He kissed the hang-man, and said, *Maria, Mater gratiæ, ora pro me ; Omnes Angeli, orate pro me ; Omnes Sancti, Sanctæque, orate pro me :* but with so low a voice, that they which stood at the ladder foote, had some difficultie to heare him.

The executioner willed him to commend his soule to God, pronouncing these wordes vnto him, ‘ Say, Iohn, Lord haue mercy on mee ! Lord receiue my soule !’ which he did, with such feebleness of voice, that scarcely hee could be heard : Then was hee turned off, (his left foot for a space taking holde of the ladder, as a man vnwilling to die,) and hung till hee was dead. His quartering, according to the iudgement giuen, was for some respectes not used, and his body buried in a place that is kept for male-factors.

THIS was the ende of that unhappie man, in whose death, any man that had eyes might see what a gracelesse and comfortlesse religion Poperie is : The power of religion manifesteth it selfe chiefly in the houre of death : The sight of a reconciled God, the assurance and perswasion of fauour through Christ, furnisheth spirite and boldnesse, and maketh a man willing to depart and quite this life : But Popish religion teacheth vncertainetie of saluation, and leadeth a man to other sauours, who can neither helpe nor comfort, in the houre of death. What maruaile, that men, who leane to such rotten and vnprofitable helps, lacking and disappointed of the assistance they hoped for, shewe a faint and cowardly minde at their last !

This onely I haue further to aduertise, that since his execution, wee haue vnderstood, by some persons who visited him, at times, during his imprisonment, that, amongst other his speeches with them, hee said this, ' That if hee had escaped his apprehension at this time, and liued till Whitsonday next, hee should haue done that which all the Bishops and Ministers, both in England and Scotland, shoulde neuer haue helped ! And, if hee might haue liued at libertie vnto that time, hee woulde willingly haue bene drawne in peeces with horses, and haue giuen his bodie to haue bene tormented !' Whereof, what shall any man collect, but that this villane was about some desperate enterprife ?

God, that in mercie hitherto detected and disapointed the malicious devices of the wicked against his Church, continue with vs his fauour, and giue vs to depend stedfastly on his prouidence. And to all the enemies of God and the King, let it befall, which wee haue seene vpon this wicked and accursed person. Amen.

FINIS.

DEPOSITIONS of the JESUITE and Papists examined at Glasgo, 5 Oct. 1614.¹

APUD GLASGOW, the fyft day of October, 1614. THIR personis, vnderwryttin, wer examineit, in presens of my Lordis of Glasgou and Argyle ; my Lord Flemyng, my Lord Kilfythe, my Lord Boyde ; the Laird of Mynto, Sir George Elphinstoune ; James Hammiltoune, Proveft ; James Bell, James Braidwood, Colin Campbell, Baillies.

ROBERT HEYGAIT, being inquyrit, how lang he hes bene acquent with this *Preift* ? Answerit, that he neuer saw him nor spak with him bot within pir twa monethis syne, or pairby ; and pat he come doun to him to his awin buithe, and gat sum paper fra him ; and pairefter zeid with him to *Mr William Stewartis* hous, to get ane chopein of wine, quha callit him self ane hors-cowper, and wes going to *Kyntyre* to by hors ;² and imployit him to by ane hors. And pairefter, callit him self ane *Preift*. Bot of his name he is ignorant ; and neuer speirit for it. And being inquyrit, gif he enterit withe him in RELIGIOUN ? So confest ; and pat he brocht him to *Marcoun Walkeris* hous ; and saw his buikis : And beleivit that he spak to him ; and pat he contentit him of pe Sacrament of pe body of Christ ; and pat he is ane Catholik. And being inquyrit, gif he desyrit him to geive him ane Mefs ? Confest he desyrit pe samyn ; and hard pe samyn at pe said tyme : And pat pair (wes) with him *Marcoun Walker, William Menteithe, Mathow Adam, Thomas Forret, James Forret*. And being speirit, gif pis *Preift* wes gone to *Sir James Clelandis* hous or not ? Hard *William Menteithe* say, pat he wes gone pair. And being inquyrit, gif pe *Lady Maxwell* wes at ony Mefs heir, within pis schort space, or at ony Mefs ? Denyit pat he euer saw hir. Bot he knawis pat pis *Preift* spak with hir, pe last tyme scho wes heir, and pat pe said *Preift* said to him, pat he wes ane of THE SOCIETIE OF JESUS. And being inquyrit, how pat pe freindschip and acquaintance of pe said *Preift* wes maid with *James Stewart* ?³ Confest, pat he wes pe bringer of jame togidder to confer ; and pat pe said *James* standis still in his former Religioun ; and pat pe said *James* wes desyrus to speik with pe said *Preift*, and he wes ernist to haif pe said *James* of his Religioun, bot he wald not giue his name pairto. And also confest, pat pair wes ane wper Mefs said in pe said *Marcoun Walkeris* hous, be pe said *Preift*, within tua dayis pairefter ; and

¹ From the Original attested copy, in the *Denmylie Coll. of MSS.*, Adv. Library.

² To purchase horses.

³ Styled *James of Jerusalem*, who figures in this Collection, Vol. III. &c.

pat pair wes present þe said *William Menteith*, *Mareoun Walker*, *David Maxwell*, brother to *New-Wark*; and pat pair wes ane wper *Preiſt* in þis Toun, quha ſtayit ane day heir, and went Eift-throw.¹ And knew not his name; bot he callit him ſelf *Ogilbie*. And being inquyrit, gif pair wes ane wper Meſs ſaid be þis *Preiſt*, in his awin hous, or nocht? Confeſt pat pair wes ane ſaid pair; and pat he wes Clerk to þe maiſt of þir Meſſis him ſelf; and pat his wyf knew not pairof, bot ſuſpectit þe ſamyn. And at þat tyme, quhen he ſould haue gone to haue bocht þe hors, he raid to *Sir James Clelandis* hous. And þis he declairit be his great ayth.

ROBERT HEIGAIT.

ANDRO SYMMER, declarit, pat he drank with þis *Preiſt* in *James Stewartis* companie, quha intyſit him to his Religioun; bot he wald not grant to him: And pat pai reſſonit wpone Religioun togidder.

ANDRO SYMMER.

THE PREIST being inquyrit, quhat his name wes, he nameit him ſelf *JOHNE OGILBIE*, ſone to *Waltir Ogilbie of Drum*: and pat he hes bein out of þis cuntraye þir twentye twa ȝearis: And pat he ſtudet in þe *Colledgis of Olmis and Gratis*; and remanit in *Olmis* twa ȝeir, and in *Gratis* fyve ȝeir; and pat he hes reſſauit þe *Ordour of Preiſthuid* in *Paris*; and come hame in *Scotland* befor now, and remanit ſex oukis, or pairby: And pat he now come hame about May laſt, or pairby: And confeſt pat þe budget,² productit on þe buird befor him, wes his awin. And pat he wes ane of þe ordinar *Jefuittis*: And being akit, quhidder THE POPIS Jurisdiction extendit ouir THE KINGIS dominounis, in ſpreitwall matteris? Affermit conſtantlie þe ſamyn; and wald dye for it.

JOHANNES OGILBEUS, Societatis Jeſu.

JAMES FORRET, confeſſis, be his great ayth, pat he knew not þis *Preiſt* all þe tyme pat þe *Erle of Eglintoun* wes heir. And wes ſend for be him, be, ſervitrix to *Mareoun Walker*, quho delt with him to come and heir þe Meſs: And for þat effect appointit wper morne; at quhat tyme he keipit: And þe Meſs wes ſaid be þe ſaid *Preiſt*; being preſent, *Robert Heygait*, *Mathow Adam*, *William Menteithe*, *Mareoun Walker*, *Thomas Forret*, his brother. And declairit, pat he wes neuer at ony Meſs befor or eftir. And pat pair wes ane wper man, quha callit him ſelf *Dawnie*, ſeducit him to þat Religioun, quhairinto he þan in ane manir agreit: And ſupponis, pat þe ſaid *Dawnie* had directit þis *Preiſt* to him, to draw him forder on: quha perſwadit him to leive THE KIRK—quhillk he did ſen ſyne; quhairof he cravit God forgewnes. And confeſſit, pat, befor he reſſauit þe Meſſe, pat morning, he maid a Confeſſioun to þe ſaid *Preiſt*, quha gaue him ane abſolutioun, and tuik þe Sacrament.

J. FORRET.

JAMES STEWART, being inquyret, quhen he knew þis *Preiſt*? Be his great ayth, declarit, pat he knew him tuentie dayis ſyne, or pairby; and pat *Robert Heygait* maid his acquaintance with þe ſaid *Preiſt*. And eftir þe drinking of ane choppine of wyne, he went with þe ſaid *Preiſt* to þe ȝaird of *Mareoun Walker*, quhair he conferrit with him anent his Religioun, and wald nawayis ȝeild to him. Bot he had ane guid exſpectatioun of him, and maid him acquent pat he had ane Meſs to ſay; bot he wald not go to it. As to his name, he knawis not þe ſam.

J. STEWART.

WILLIAME MENTEITH, being inquyrit, gif he knew þis *Preiſt* or not? Anſwerit, pat he ſaw him in þis Toun ane monethe ſyne, or pairby; and pat he wes in his companie, in the hous of *Mareoun Walkeris*; and pair hard þis *Preiſt* ſay ae Meſs; and denyit ony mae. And paireftir, being confrontit with *Robert Heygait*, confeſt þan he hard thrie Meſſis, twa pairof in *Mareoun Walkeris*, and ane wper in *Robert Heygaitis*; and pat he tuik þe Sacrament. And being inquyrit, quhair he gat his beginning of þat Religioun? He anſuerit, pat he firſt wes inſtructit thairin, being ſervand to þe *Laird Kers*, ȝounger, be þe *Lady Angus*, and *Archibald Douglas*, in þe *Place of Moungtoun*, beſyde *Air*, ten or twelf ȝearis ſyne, or pairby. And declairit, pat *Thomas Forret* tauld him of þis *Preiſt*; and pat *Robert Heygait* informit him pat þe ſaid *Thomas* was of þat Religioun. As als, declairit, pat he ſaw *Johnne Wallace of Corſflat* at þe Meſs, in *Robert Heygaitis* hous, ſaid be þe foirſaid *Preiſt*.

WM MENTEITHE, w^t my hand.

¹ Probably to Edinburgh; he went through the town to the eastward.

² Portmanteau, or small trunk.

THOMAS FORRET, being inquyrit, quhair he had first acquaintance with his *Preist*? Declairit, he saw him first in *Marcoun Walkeris* hous, being fetchit in to him be *Robert Heygat*, and efter lytill conference with him anent the Religioun, he desyrit him to cum to Mefs, quhilk he did; and befor the reffauing pair of, he maid his Confessioun, and reffaut abfolutioun; and pairefter tuik the Sacrament. And that pair wes present at the said Mefs, *Mr Johnne Mayne, Marcoun Walker, Mathow Adam, Robert Heygat, James Forret, William Menteith*; and wes at na Mefs sene syne, seing be the sycht pair of he despyrit that Religioun. And that the remanent lykwayis reffaut the Sacrament.

THOMAS FORRET.

MATHOW ADAM, being inquyrit, how long he had embracit the Popisch Religioun? Declarit, that, about fyve zeiris syne, or pairby, he had his entrie pairt in *Danekin*; and hes fence reffaut the Communioun. And that he had acquaintance with his *Preist* four oukis syne, or pairby, be the moyen of *Robert Heygat*. And siclyk, in somer last, wes acquaint with ane *Dawnie*, ane *Preist*, in *Marcoun Walkeris* hous; and that he wes at thrie Messis; that his *Preist* said ane in *Robert Heygaitis*, and twa in *Marcoun Walkeris* hous. And being askit, quhat his professioun is presentlie? Answerit, that he wes of the Religioun, be the lawis of his realme.

MATHOW ADAM.

MR JOHNNE MAYNE, being inquyret, gif he knew his *Preist* or not? Declairit, be his ayth, he knew him in *Marcoun Walkeris* hous, to the quhilk he wes brocht be *Robert Heygat*; quhair he confessit him self to the *Preist*, reffaut obfolutioun, befor he hard the Mefs and reffaut the Sacrament. And that pair wes present *Marcoun Walker, James Forret, Thomas Forret, Robert Heygat, Mathow Adam, William Menteithe*. And that, as zit, he awowis that Religioun, and professis the samyn, quhill he be better resolut.

MR J. MAYNE.

JOHNNE WALLACE of *Corsflat*, being inquyrit, gif he wes at a Mefs said be his *Preist*, or not, in *Robert Heygaitis* hous? Confessit, that he wes present pairt, and brocht pairt to be the said *Robert Heygat*.

JOHNNE WALLACE.

THIS is the true copie of pair CONFESSIOUNIS.

GLASGOW.

Suborning of Witnesses—Perjury—Slaughter, &c.

MAR. 8.—ROBERT GRAHAM, callit of Langboddome; Robert Dunlope and George Wat, wobster¹ in Edin^r; Adame Blaiklok, duell-and at the West-point of Ed^r; James Boyle, wobster in Edin^r; Johnne Hammiltoun, tailgeour thair; Adame Moffet, chopman;² Williame Tok, beltmaker at the Wast-point; James Or, flescheour in Crawmound.

Dilaitit, accuset, and persewit, be Sir Williame Oliphant of Newtoun, kny^t, Aduocat to our fouerane lord, for his hienes intreis, off the feuerall crymes vnderwrittin, contenit in thair Dittayis, eftir specifit, viz.

DITTAY against Robert Grahame for Suborning of Witnesses and Perjury.

THE said ROBERT GRAHAME: Forfamekill as it is expresse provydit, statute, and ordanit, be dyuerse Actis of Parliament, speciallie, be the 80 Act of the sext Parliament of our fouerane lordis darrest guidfchir, King James the Fyft, of famous memorie; and be the 22 Act of the fyft Parliament, and 48 Act of the saxt Parliament of our fouerane lordis darrest mother, Quene Marie, of worthe memorie, that all sic persones as induces ony man to beir fals Witnes, or ar seducearis or corrupteris of Witnassis, inducing pame pairby to depone falslie, that all sic persones fall be pwneischet in thair persones and guidis, with all rigour, according to the dispositioun of the Cowmone Law, baith the Canone,

¹ Weavers.

² It does not seem clear whether this denotes shopman, or chapman (*pedlar*), a dealer in small wares. The latter, however, is thought most likely.

Ciuite, and Statutes of this realme, that is to say, ather be peirfing and boiring of pair tungis, confiscatioun of pair moveable guidis, and sic vther pwneischment to be inflictit vpon thame, according to the discretioun of the Lordis: Nochtwithstanding quhair of, it is of verritie, that pe said Robert Grahame, being ane fraudulent and fals man, studeing and imploying his witis thir mony zeiris bygane, how, be craft and dissait, to suborne and seduce dyuerse persones to be Witnesses in findrie actiones, alsweill depending befor the Lordis of Sessioun as vther Judicatories of this realme: And making vp to him self a plane tred and professioun pair of, He, for pe manifestatioun of his forder skill and knowlege in the said professioun, vpon hoip and esperance of his expectit gayne, vnderstanding laillie, that pair was ane Actione of Spuilzie intentit and perfewit befor the Lordis of Sessioun, at the instance of Mark Gledstanes, indueller in Edr, aganis James Guidlet and vtheris, his complices: the said Robert Grahame, as ane oppin and manifest coofiener and dissaver, with wonderfull peartnes and double deilling, first adressit him self to the said Mark Gledstanes, and discoverit to him the haille secreittis of his actioun; declairing to pe said Mark, how he had bene in Mussilburgh, and had conferrit with sum folkis pair, quha had reffet sum of pe said Markis guidis and geir, that was spuilzeit frome him be pe said James Guidlet; and that pai war in grit feir leift pe said Markie sould prevaill in his said actioun: At quhilk tyme, lykwayis, the said Robert Grahame, maist fallie and craftillie, declairit to the said Mark, that he wald find out dyuerse men to be Witnesses, quha vnderstuid of the spoliatioun of his guidis; and offerit frelie to him, for gayne and commoditie, to bring thame to him, and to cause thame be Witnesses for preving of his actioun: Lyk as, accoirding pairto, the said Robert Grahame, vpon hope of gayne and commoditie, in the letter end of Januar lastbypast, or pairby, conuenit to himself Adame Moffet, chopman in Edr, Robert Dunlop, wobster pair, George Wat, wobster pair, and Williame Tok, beltmaker pair; quhilkis foure persones he maist fraudulentlie persuadit and inducet to vndertak to be Witnessis, to depone in the said cause, in fauouris of the said Markie Gledstanes, aganis the said James Guidlet, albeit pai knew nathing of the verritie pair of. LYK AS, pe said Robert, immediatlie eftir his inducing and suborning of the saidis Witnessis, to pe effect foirfaids, for acqyreing of his forder gayne, past and reveillit pe haille premisses to the said James Guidlet, and put him vpon the counsell pair of: The verritie of the quhilk knaverie and dissaitfull deilling of the said Robert Graham being detectit to the Lordis of Counsell and Sessioun, and pai, vpon diligent examinatioun of pe said Robert, and pe Witnesses foirfaids, haifing ryppit vp the haille secreit of all pair proceedingis; and in end, finding pe said Robert Grahame to be bot ane false and leying lymmer, the saidis Lordis brocht him to this poynt; and, of his awin consent, maid him to bind him self and to be content, that in caice it sould be fund be the saidis Lordis, that he ony wayis vareit in his Depositiones paireftir, *that he sould be content to be HANGIT but fauour!* Lyk as, pe said Robert, being dyuerse tymes paireftir soleinnlie suorne, in presens of the haille Lordis, to declair pe verritie, vpon ane only poynt, viz. quhiddir or nocht pe said Robert first proponit pe purpos to the said Mark Gledstanes him self, anent the bringing to him of pe saidis Witnesses, for preving to him of his caus, or gif pe said Markie socht him first to that effect; the said Robert, eftir dyuerse examinationes and solemne aithes maid be him, haifing constantlie declairit pat the said Mark first come to him and proponit pat matter; in end, pe said Robert, as ane manifest periuret and leying lymmer, be his posteriour Deposition, acknowlegit and confessit, that he first adressit him self to Mark, and maid the first motioun of pe said matter to him: In the cairfull and exact tryell of the quhilk matter, be the saidis Lordis of Sessioun, thair lordschipis, be pair sentence and decreit, nocht only hes fund and declairit the said Robert Grahame to be ane fraudulent and fals suborner of the saidis Witnessis, seducing, be craft and dissait, vpon hoip of gayne, thame to depone in the said caus betuix Gledstanes and Guidlet, quha vnderstuid nathing pairtill: Bot lykwayis, be the same sentence, he is fund and declairit to be ane fraudulent and fals suborner of Witnesses, be craft and dissait, in dyuerse vtheris actiones and causes; speciallie, in the fraudulent suborning and seducing of Witnesses in the caus of spuilzie perfewit be Quintene Braidfute aganis Coupland; and lykwayis, in the caus of Divorcement perfewit be the Lady Torthorrell aganis my lord hir husband, and in dyuerse vtheris

actiones and caussis, moveing the saidis Witneffes, be his intyseing and fals Subornatioun, to vndertak vpon thame to beir testimonie, and to preve and affirme for treuthe, that, quhair of thay of thame selfis war altogidder ignorant. And be the said Sentence, he is ffund be pe saidis Lordis to haif frequentlie hantit that damnable tred of lyfe, with wonderfull peartnes and double deilling, betuix pairteis, so synelie proveing pe disflaver, chopping, changeing, and triking at his humour, fra hand to hand, that quhairas pe said Robert was evin now, be his inventiones and forgereis of his brane, about pe on-drawing of sum one pairtie to his designes, quhilk he wald promeis and avow to mak guid, so incontinent pairtestir he wald discover and detect all to the vther pairtie, quhome lykwayis, be his fals furnishe, he wald induce to sum contrarie motioun; in baith, intending nathing bot double and fals deilling, to the preiudice of aither¹ pairtie. And in end, in the said Robert his tryell and examinatioun, in presens of the saidis Lordis, he is ffund, be pair said Decreit, to be dyuerfed,² and many tymes menfuorne, and periuret; as the said Decreit beiris. And pairfoir, the said Robert, as ane manifest seducer and Corrupter of Witneffes, induceing and intyseing thame, for his awin lucre and gayne, fallsie, aganis pair knowlege and conscience, to depone in dyuerse caussis, speciallie in the caussis aboue writtin; quhair of he is declairit giltie, be the saidis lordis Decreit, and also conforme to his volunter offer aboue specifeit, quhairby he, of his awin consent, was content to be hangit, in caice he war fund to varie in his Depositiones, and pairthrow menfuorne; and as a fals and periuret disflaver, aucht and fould vnderly the pwneischment of death, in maist exemplarie maner, to pe terrou of vtheris.

DITTAY against Robert Dunlop, &c. for Perjury and False-witnessing.

THE saidis ROBERT DUNLOPE, GEORGE WAT, and ADAME BLAIKLOK; fforamekill as, by dyuerse Actis of Parliament, it is exprellie provydit, statute, and ordanit, that all sic perfonas as beiris ffals Testimonie and Witnessing, in ony caus quhatfoeur, fals pwneisched to the death, according to pe Disposition of pe Cowmone Law, baith Canon, Ciuile, and Statutes of this realme: And trew it is, that the foirnamet perfonas, nochtwithstanding of the saidis Actis, haifing moift wilfullie plunget and fetterit thame selfis in matteris of damnable ffalssetis, and iniust beiring of Witnessing, with sic evidene of precogitat Periurie, that albeit thay war conscious of pair awin malicious and fals intentiones, 3it wald thay rwne heidlongis, and combine and vniformelie agrie togidder to mak merchandice of pair consciences, resolveing with thame selfis, to beir testimonie, and effrontedlie for veritie to avow, that (howfoeur in it self) 3it to thame vnknawin, thay being inducet pairto, nocht samekill vpon the hoipis and promiseis of expected gayne, as out of thair continual hant and consuetude of leying, quhilk, throw custome in thame, did turne to nature; quhairin be degrees, thay haifing attynit to sic fynes,³ that gif pair course pairin had nocht happellie bene interruptit, the estait of ony quhatfoeur, without exceptionn, mycht haif bene generallie endangerit: And namelie, the foirsaidis perfonas, and everie ane of tham, be the convoy and craftie dealing of pe said *Robert Grahame*, callit of *Langboddome*, pair pylet⁴ and leader in pis pair vnconscionable tred of lyfe, haifing fauld thame selfis to all maner of mischief, and making schipwrack of all ffaiith and honestie, nocht only vpon reffautit commoditie and gayne be thame and everie ane of thame, laitlie fra Mark Gledstanes, indueller in Edr, offerit thame selfis to depone, as Witneffis, in ane caus perfewit be him aganis James Guidlet, befor the Lordis of Session, quhair of thay war altogidder ignorant; and quhairin the saidis *Robert Dunlope* and *George Watt* war maist deiplie sworne to geve trew Testimonie; albeit, in pair examinatioun, pair fals and damnable proceeding, by pe vigilant panes taue be the saidis Lordis, was maist happilie brocht to licht: Bot lykwayis, the saidis Robert Dunlope and George Watt, nocht as rasche and rekles liearis be officious testimoneis, bot as Witneffis deliberately ffals, haifing quyte banished the feir of God, quha is pe witnes of conscience, 3e⁵ aganis⁶ pair knowledge and conscience, being corruptit and seducet be

¹ Each.

² Contradictory; varying in his evidence.

It is probable, however, that this infers that he was a

dyvour or bankrupt, which was considered most infamous.

³ Refinement. Fr. *finesse*.

⁴ Pilot.

⁵ Yea.

⁶ Against, or contradictory to.

greid of gayne and guid deid, hes gevin fals and vntrew Testimonie, in ane actione and caus perfewit be Williame Cant aganis Thomas Gray, in the quhilk Marioun Crufurd, spous to the said Williame Cant, in absence of hir husband, was speciall doar: And the said *Adame Blaklok* gaif the lyk ffalfe and vntrew Testimonie, in the actione and caus perfewit be pe said Quintene Braidfute aganis Coupland. As everie ane of pair Depositiones, tane in prefens of the haill lordis, testifeing pair acknowledgement of the foirfaidis ffalfettis, in pe selff beiris. AND pairfoir, the saidis persones, and ilk ane of thame, as fals and periuret Witnesfes, of certane knowlege, and aganis the licht of pair awin consciences, deponeing in the saidis caussis, as said is, cleirlye tryit by the saidis Lordis, aucht and fould ressaue pair dew and deseruit pwneischment, to the terrour and example of vtheris.

DITTAY against Johnne Hammiltone, &c. for Perjury and False-witnessing.

AS ALSO, the saidis JOHNNE HAMMILTOUN, ADAME MOFFET, and WILLIAME TOK: fforamekill as, albeit, be the foirfaidis Actis of Parliament, it be exprellie provydit, statute, and ordanit, that all ffals Witnesfes, and faules¹ persones, offering thame selffis, for greid and perticuler gayne, to beir ffals Witnessing in ony matter; and all sic as conduces with ony persone, to that end and effect, ar Ordanit to be pwneischet be Banischment, peirfing of pair tungis, dismembring of pair hand, and be vther panes and pwneischmentis provydit be dispositioun of the Cowmone Law; and forder pwneischment to be inflicted vpone thame, according to the discretioun of the Lordis of Sessioun: Nochtwithstanding quhairof, it is of verritie, that the saidis *Johnne Hammiltoun*, *Adame Moffet*, and *Williame Tok*, being corruptit with promeissis of rewaird, and be ressaie of guid deid and vtherwayis, war seducet and intyfet to be ffals Witnesfis, willinglie and wittinglie offering thame selffis, vpone hoip of rewaird, to geve ffals Testimonie, in preving of certain actiones, altogidder vnkawin to thame; namelie, the said *Adame Moffet* and *Williame Tok*, conforme to pair Depositiones maid be thame in prefens of the haill Lordis of Sessioun, fauld and conducet thame selffis for rewaird, to be ffals Witnesfis in the Actione of Divorcement, perfewit be THE LADY TORTHORRELL aganis THE LORD OF TORTHORRELL, hir husband; as also, in ane actione of Spuilzie, perfewit befor the saidis Lordis, at the instance of *Mark Gledstanes* aganis *Guidlet*: And siclyk, the said *Johnne Hammiltoun*, conforme to his Depositione, maid in prefens of the saidis Lordis, fauld and conducet him selff, as ane ffals Witnes, to haif deponit in the said actione of Divorcement, perfewit be the said Lady Torthorrell aganis hir husband: And albeit the saidis actiones war altogidder vnkawin to thame, zit the foirnameit persones, and ilk ane of thame, aganis thair knowlege and conscience, maist forwardlie and malapairtlye, vnderuik to verifie and preve the samyn; quhilk wikket intentioun thay had nocht failzet, wittinglie and wilfullie, to haif put in practize, gif thay had nocht bene lattin,² be the intervening tryell tane be the saidis Lordis of Sessioun, alsweill be pair Confessiones, as vther cleir and evident probatioun tane pairintill: And pairfoir, thay, and ilk ane of thame, as persones seducet and intyfet to beir ffals Testimonie, anent the probatioun of the foirfaidis caussis, quhairof thay war altogidder ignorant, aucht to ressaue pair dew and deserued pwneischment, to the terrour and example of vtheris.

DITTAY against James Boyle, &c. for Suborning of Witnesses.

IN lyk maner, the said JAMES BOYLE, &c. in the lait tryell and examinatioun, taine of him in prefens of the Lordis of Sessioun, he, conforme to his awin Confessioun and Depositione, and vther probatioun had aganis him, is fund to haif delt with dyuerse Witnesfes, suborning and inducing thame to Depone in dyuerse actiones, quhairof the saidis Witnesfes war altogidder ignorant; speciallie, in the said actione and caus perfewit be pe said *Williame Cant* aganis the said *Thomas Gray*, quhairin, be pe saidis Lordis Sentence and Decreit, he is ffund to haif past the boundis of dentie, and nocht a littil to haif oversene him selff, haifing sa heichlie transgressit pairintill, that his offence, in that behalfe, requyres

¹ *Saulless*, void of soul and conscience.

² '*Let*,' hindered, prevented.

heichlie to be pwneift : And pairfoir, as ane manifest Suborner and seducer of Witneffis, aucht and fould reffauē his dew and deferued pwneifchment, to þe terroure and example of vperis to abftene fra the yk heirefter.

DITTAY againſt James Or, for Slaughte.

AND laſt, the ſaid JAMES OR : florſamekill as, vpon the ſaxt day of Marche inſtant, the ſaid James, in his paſſing furth of þe burgh of Ed^r to Crawmond, haifing forgadderit with *Johnne Chirritie* in Crawmond, vpon the Grene pairof, thay haifing paſt in to the duelling hous of Thomas Mathieſone pair, quhair thay drank togidder ane hour or pairby : And the ſaid James and Johnne haifing paireſtir come furth of þe ſaid hous, certane ſpeiches haifing fallin out betuix thame, and be occaſioun of a lie gevin be þe ſaid Johnne Chirritie to the ſaid James Or ; he, in his beiftlie rage and furie, drew ane knyfe or braig, with the quhilk he ſtrak þe ſaid vmq^{le} Johnne Chirritie ane crewall and deidlie ſtraik aboue his left pape ;¹ off the quhilk ſtraik, he immediatlie, within ane hour paireſtir, depairtit þis lyfe ; and ſa, was crewallie and vnmerciefullie ſlane, vnder nycht, be þe ſaid Jame Or : for the quhilk, he was tane *in flagrante crimine*, and being examinat pairupoun, hes confeſſit the premiſſes to be of veritie.

My lord Aduocat producet the DITTAY ; and eftir reiding thairof, in reſpect the perſones on pannell could allege nathing aganis the relevancie thairof, to ſtay proces, deſyret the ſamyn to pas to the knowlege of ane Aſſyſe ; and producet ane roll of the perſones lauchfullie ſummond to that effect. Quhilkis perſones of Aſſyſe being choſin, fuorne, and admittit, eftir accuſatioun of the ſaidis perſones, be Dittay, of the crymes *reſpectiue* aboue writtin, quhilkis war verifeit be production of the ſaidis Lordis Decreit, and thair awin Depoſitiones, maid in prefens of the haill Lordis of Seſſioun : As alſo, the ſaid Slauchter was verifeit be the ſaid James Or his awin Confeſſioun, maid in Judgement, in prefens of the Juſtice and Aſſyſe.

VERDICT. The Aſſyſe, all in ane voce, be the mouth of James Raulſtoun, mercheand burges of Edinburgh, ffand, pronuncet, and declairit, conforme to the Depoſitiones and Decreit producet, and the ſaid Judicial Confeſſioun maid be the ſaid James Or, the foirnameit haill nyne perſones vpon pannell to be fylet, culpable, and convict of the feuerall crymes and pointis of Dittay aboue mentionet.

SENTENCE. The ſaid *James Or* to be tane to the Mercat-croce of Edinburgh, and thair his heid to be ſtruken fra his body ; and all his guidis and gear to be eſcheit, &c. : AND ſiclyk, the ſaidis *Robert Graham^e*, *Robert Dunlop*, *George Wat*, and *Adame Blaiklok*, to be tane to the ſaid Mercat-croce of Edinburgh, and thair to be Hangit, quhill thay be deid ; and all thair moveable guidis to be eſcheit to his Maieſteis uſe : THE ſaidis *James Boyle*, *Johnne Hammiltoun*, and *Adame Moſſet*, to be firſt Scourget throw the burgh of Edinburgh, fra the Caſtell-hill to the Nether-boll thairof, and Brunt with ane hett irne vpon the cheik, and thaireſtir Banifchet this realme of Scotland ; and nevir to be fund agane within the ſamyn, without his Maieſteis Licence, vnder the pane of deid :

¹ Breast.

AND last, that the said *Williame Tok* be lykwayis Scourget throw the said burgh, and thairefter Banischet this realme; and nevir ffund agane within the samyn, without his Maiesteis Licence, as said is, vnder the pane foirsaid.

Uttering “Tressonable, Blasphemous, and Damnable Speiches” against the King.

[THE Trial of JOHN FLEMING, elder, in Cockburnspath, which follows, is so remarkable in its nature, and the Sentence of death pronounced upon the unfortunate pannel, is so frightfully disproportioned to the pretended *crime* for which he stood charged, that, did it not occur in the authentic Records of a Supreme Tribunal, and were it otherwise unvouched, no honourable mind could for an instant admit the probability of its truth. Had mention been made of this fact in any private correspondence of the period, or in contemporary Memoirs or Annals, it would have been at once discredited by all, as an unprincipled libel on the character of our *British Solomon*! Unhappily, however, for the character of King James VI, the event here recorded is too true, and there can be no doubt that it did actually occur. The names of other victims to the same insane ideas of justice, are inscribed, in characters of blood, on the pages of our Criminal Records. It is unnecessary to recapitulate such instances, at any length, in this place. It is enough merely to refer the reader to the Cases of *Dik-soun*, Aug. 3, 1596;¹ *Tennent*, Oct. 10, 1600;² *Cornuall*, Apr. 25, 1601;³ and *Ross*, executed Sep. 10, 1618.⁴]

May 17.—JOHNNE FLEMYNG, elder, in Cokburnespethe.

Dilaitit of dyuerse tressonable, blasphemous, and damnable speiches vtterit be him to Johnne Lawder, Minister, aganis our souerane lordis most sacred persone, &c. viz. FORSAMEKILL as, Johnne Lauder, Minister at Cokburnespeth, haifing laitlie reprehendit and fund falt with the said Johnne Flemyng, becaus his sone repairit nocht to the Communioun; saying to the said Johnne, that ‘albeit he contemnit þe ordour and discipline of the Kirk, 3it the Kingis most gracious Maieftie, quho is a most religious and godlie Prince, and vnder whois blissett government the trew Religioun and discipline of the Kirk is establischet and advancet, wald nocht suffer siche contempt and disobedience pas over vnpw-neisched:’ the said Johnne Flemyng, vpone delyuerie of the saidis speiches, schaiking af all feir of God, and that reverent respect, quhilk in conscience, befor God, and in his dentie and allegiance, he aucht⁵ to HIS MAIESTIE, most tresson-abillie, blasphemoullie, and mischantlie⁶ replyit to þe said Minister, in thir woirdis: ‘ffeind nor THE KING schoote to deid or þe morne—and that he die of þe falling feiknes!’ And it being demandit of the said Johnne, quhat movet him to vtter siche blasphemous and horrible speiches aganis his Maieftie?—maid this scornefull and disdainfull ansuer: ‘War nocht⁷ THE KING and his lawis, he had nocht wantit his landis—and pairfoir, he cairt nocht for þe King—for hanging wald be þe worst of it!’ Be the vttering of the quhilkis damnable and blasphemous

¹ See this Collection, I. 385. ² *Ibid.* II. 332. ³ *Ibid.* II. 349. ⁴ *Ibid.* III. under the above date. ⁵ Owed. ⁶ Wickedly. O. Fr. *meschantment*. ⁷ Had it not been for the King, &c.

speiches aganis his Maiestie, he had committit most haynous and vnpardoneable Treffone. Lyk as, he being convenit and presentit befor the Lordis of his Maiesteis PREVIE COUNSELL for the saidis speiches, the saidis Lordis of Secret Counsell hes tryit the samyn to be of verritie; and thairfoir, Ordanit him to be pwneist *exemplarie*, to the terrour of vtheris.

The Dittay being red to the pannell, (he) maist humblie offerit him self in his Maiesteis Will, for the said crymes: Quhairupoun my lord Aduocat askit instrumentis. Quhilk Dittay was verifeit, be production of the Counsellis Decreit.

VERDICT. The Assyse, all in ane voce, be the mouth of Cuthbert Mure, furriour in Edinburgh, chancellor, stand, pronuncet, and declairit the said Johnne Flemyng to be Giltie and convict of the saidis Treffonable Speiches vtterit be him, in maner specifeit in his Dittay.—SENTENCE. To be tane to the Mercat-croce of Edinburgh, and thair to be hangit quhill he be deid: And all his moveable guidis to be escheit, &c.

Slaughter.

May 30.—JOHNE BRAND, Student in the Colledge of Philosophie of Ed', sone to vmq^{le} Johnne Brand, Minister at Halyrudhous.

Dilaitit of airt and pairt of the felloun and crewall Slauchter of vmq^{le} Williame King, sone naturall to James King, Aduocat; committit vpon the xxvij day of Maij instant, vpon St Leonardis Craigis, neir to the said burgh, besyde the Park-dyke of Halyrudhous, be streking of him with ane drawin knyfe, vnder the left pape; quhairof he immediatlie deceifit.

PERSEWARIS, James King, Aduocat, as fader; Mr Alexander King, Aduocat; Mr Adame King, ane of the Commissaris of Edinburgh, as fader-brether.

The pannell acknowledges the Dittay to be of verritie, and craves God, and our Souerane lord, and the partie, maist humblie, pardoun for the fact: And gif any meanis of satisfioun (reservand his lyfe) may be acceptit, accoirding to his habilitie, is maist willing to fulfill the samyn, accoirding to the persewaris iniunction: Bot gif na vther thing bot his bluid will mitigat the persewaris wraith, offeris the samyn to be pwneist accoirding to the Law; desyreing the Lord, throw the mereitis of the precious bluid of his Sauour Chryst Jesus, to be mercifull vnto his faull!

VERDICT. The Assyse, all in ane voce, be the mouth of Johnne Mafoun, mercheand in Ed', chancellor, stand, pronuncet, and declairit the said Johnne Brand, accoirding to his awin Confessioun, to be ffylet, culpable, and convict of the Slauchter of the said vmq^{le} Williame King.—SENTENCE. To be tane to the mercat croce of Ed', and thair his heid to be strukin frome his body: And all his moveabill guidis to be escheit, &c.

Treasonable Fire-raising in Coal-pits.

Jun. 10.—JOHNE HENRIE in Littill Fauſide.

Dilaitit, accuſet, and perſewet, be Sir Williame Oliphant of Newtoun, kny^t, Aduocat to our ſouerane lord, for his hienes intereis, of the crymes vnder-writtin, viz.

FORSAMEKILL AS, albeit be the 146 Act of our Souerane lordis tuelf Parliament, haldin at Ed^r vpon the fyft day of Junij, 1592 5eiris, makand mentioun that his Maieſtie and eſtaittis, for þe better pwneifchment of the wiked cryme of ſetting ffyre in coil-heuches¹ be ſum vngodlie perſones, vpon privat revenge and diſpyte, haif pairfoir Statute and Ordanit, be vertew of the ſaid Act of Parliament, that þe committing of the ſaid cryme, in ony tyme paireſtir, ſall be Treſſone; and that the committeris of þe ſaid haynous and deteſtable cryme, being ordourlie convict pairof, ſall ſuffer and vnderly ſic pwneifchment in pair bodeyis, landis, and guidis, as is dew be the law in cauſes of Treſſone: As in the ſaid Act of Parliament at lenth is contenit. Nochtwithſtanding quhairof, it is of verritie, that þe ſaid John Henrie, being a ſervand and workman within the Coil-heuch of Littill Fauſyde, and pairthrow beſt acquetit with the haill ſecreit paſſages and pairtis of the ſaid heuche, haifing conſauet ane deidlie rancour and evill will aganis Mungo M^ccall, now of Littill Fauſyde, becaus þe ſaid Johnne had nocht that libertie and commandiment vnder him quhilk he had vnder Johnne Levingſtoun, his prediceſſour; in a devillifch diſpyte, and to þe wrak and diſtruction, nocht only of the ſaid Mungois coil-heuch, bot to þe grit preiudice of þe cuntrie and Cowmounwelthe, in the monethis of ffebruar, March, and Apryle, in the 5eir of God I^m.Vj^c. and fourtene 5eiris, at the leiſt, in ane or vther of the ſaidis monethis, immediatlie eftir þe ſaid Mungo M^ccall acquyret the rycht and poſſeſſioun of the ſaid coillheuch, come, vnder ſilence and clud of nycht, to þe ſaid Coillheuch of Littil Fauſyde, and enterit pairintill be ane previe hoill and paſſadge of his awin, and maiſt treſſonable pat ffyre within the ſaid heuche, of purpois and intentioun to burne and diſtroy þe ſamyn and haill coillis being pairintill: Lyk as, for the gritter ſecrecie and down-halding of the ſaid ffyre, he nychtlie, be þe ſpace of tuentie dayis togidder, reſoirtit to the ſaid heuche in ſecreit maner, fſed, and nureiſchet þe ſaid ffyre, ſtoppit þe haill air and vent hoillis with ſtray,² quhairthrow þe ſaid ffyre ſould nocht be diſcoverit: Be reaſone of the quhilk ffyre, and ſtopping of the haill air and vent hoillis, thair arraiſe ſic ane peſtiferous and foule air within the heuche, that nane of þe workmen war able to work pairintill; quhairvpon, and be þe pulling furth of ane bottell of ſtray furth of ane hoill in the ſaid heuche, quhilk hoill was callit þe ſaid Johnne Henreis vue,³

¹ Coal-pits.

² Straw.

³ Perhaps for view, prospect.

the vehemencie of þe said fyre was discoverit. Be þe committing of þe quhilk detestable fact, he hes committed maist haynous and vnpardoneable Tressone.

The pannell denyis the Dittay; and takis instrumentis that na pairtie infistis in his persute bot my lord Aduocat; and that thair is nocht ane suorne Dittay. My lord Aduocat producet Thomas Cochrane, his lordschipis informer, quhais aithe he defyret to be tane, anent the treuth of the Dittay.

Thomas Cocherane, greif¹ at Littill Faufyde, being suorne vpone the verritie of the Dittay producet be my lord Aduocat, declairit that Johnne Henrie was giltie of þe cryme contenit pairintill, bot he wald nawayis follow nor persew him for the samyn, in respect he had na intereis; quhairvpoun my lord Aduocat askit instrumentis.

The Assyse being suorne, my lord Aduocat takis instrumentis of thair fueiring; and protestis for Errour gif thay acquit.

VERDICT. The Assyse, being ryplie and at lenth advyset thairwith, togidder with the taikynis² and Depositiones producet for instructing thair of, be pluralitie of voitis, ffind, pronuncet, and declairit, be the mouthe of Alexander Penman in Lyttill Faufyde, chancellor, the said pannell, to be ffilet, culpable, and convict of the tressonable cryme specifeit in the said Dittay.—SENTENCE. To be tane to the Mercat-croce of Ed^r, and thair to be hangit vpone ane gibbet, quhill he be deid; and his heid thaireftir to be strukin frome his body, and put vpone ane prik, fixt and set vp vpone the landis of Littill Faufyde, besyde the said Coil-heuche: And all his moveable guidis, gif he ony hes, to be escheit, &c.

Wamesucken—Slaughter.

Jun. 22.—ALEXANDER DAVIDSOUN, in Wester Kerse.

Dilaitit of the crewall and vnnaturall Slauchter of vmquhile George Suord, his sone in law, be streking of him with ane lance-stalff in the bellie, and gorryng his puddingis, within the said George awin duelling hous in Wester Kerse, vpone the xxix day of Maij last: Off the quhilk straik he deceissit, vpone the tuelf day of Junij instant; committit vpone set purpois, prouisioun, and foirthocht ffellonie, in hie and manifest contempt of his hienes autoritie and lawis.

PERSEWARIS, Patrik Suoird and Johnne Suoird, as brether.

VERDICT. The Assyse, being ryplie and at lenth advyset thairwith, togidder with the said Alex^r his Judiciall Confessioun and acknowledgement of the said haynous cryme to be of verritie, and his penitencie for the samyn, be pluralitie of voittis, ffind, pronuncet, and declairit the said Alexander Davidsoun to be ffilet, culpable, and convict of the said crewall Slauchter.—SENTENCE. To be tane to the Castell-hill of Ed^r, and thair to be heidit; and his haill moveabill guidis to be escheit, &c.

¹ Grieve; overseer.

² Proofs; tokens; evidence.

Mutilation and Demembration.

Jun. 30.—JOHNE PITSCOTTIE of Loncardie, Colene Pitscottie, his eldest sone.

Dilaitit of airt and pairt of the Mutilatioun of Margaret Stewart, spous to Thomas M^cduff of Glenelwart, of hir richt airme ; committit vpon the xxix day of August, 1613.

PERSEWARIS, Margaret Stewart, Thomas Duff of Glenelwart, hir spous.

The persewaris passis fra the persute of the pannell, for the crymes contenit in the Letteris, *pro loco et tempore*. Quhairupone the pannell askit instrumentis.

THE Justice continued this case ' to the thrid day of the Air (of Perth) or soner, vpon xv dayis wairning.' Robert Creichtoun, brother to the Laird of Innernytie, became cautioner for their appearance, &c.

High Treason—Taking and Detaining the Castle of Dynniebaig—Resisting King's Lieutenant, &c.

[As the Editor has already entered so fully into the subject of THE REBELLION IN ILAY by *Sir James Maconeill*, &c., it is unnecessary to occupy further space here ; more especially as *Mr Gregory's* Historical Researches, already far advanced, are exclusively devoted to the elucidation of such points.¹

The following interesting memorials have been preserved by *Calderwood*, in his MS. Church History,² which the Editor believes will prove an acceptable illustration of this subject. They have been discovered since the former sheets were sent to press. 'SIR JAMES M^cKONNELL escaped out of the *Castle of Edinburgh*, where he had been wairdit the space of eighteen years, upon the 24 of Maij, the day after *Angus Ooge*, his brother, and eight or nine of his complices, were brought to *Edinburgh*. It was thought that he escaped not without the privy of these who had credit. In the beginning of July, he entered in *Ila*, with a number of men of THE ISLES, and, within three or four dayes after his landing, took the *Castle*, slew the *Captain* and other three or four. His forces increasung, he went out of and spoiled the lands belonging to the *Earl of Argyle*, compelled the tenants to pay him their mailles and duties, and keepest about him five or six hundreth men. Upon the eight of July, *Angus Oge*, brother to *Sir James McKonnell*, and his complices, were hanged at the Market Crofs of *Edinbr*. They affirmed that *George Grahame* assured them, in the *Chancellours* and *Counsell's* name, that they would procure the Kings favour and safety, both of their lives and lands, if they would render the pledges ; and desired them to keep the House till the King's favour were obtained, or elis they had not made resistance to the King's Lievtennant. Because the said *George* was not troubled by the Counsell or any other, the people thought hard of it.—Aug. 16. The *Earl of Argile* came to *Edinburgh*, sent from Court be THE KING to passe upone *Sir James McKonnell*. He had Commisshione to warne and raise the Sherifdomes nixt adjacent, and to wage shouldiers, upon the King's charges. One of THE KING's Ships, and four pinnages, were sent by Sea, with cannon, musket, powder, bullet, picke, and corflet. The *Counsell* gave their directione, upon the thrid of August. About the middest of September, their forces drawing near to others,³ *Coline Campbell of Kilberrie*, and some with him, were surprisid and taken be *Coll Mackgilespicke* and his followers. *Mr Donald Campbell*, that Gentleman of the House of *Caddell*, accompanied with six or seven hundreth men, went out of *Argiles* Campe, and surprisid, in a suddane, *Col Mackgilespick* and his companye ; killed some, tooke others, and hanged some. Col him self and the most part hardlie escaped. *Sir James*, and so many as might flie with him,

¹ See Vol. III. p. 1.

² Advocates' Library.

³ Each other.

fled out of *Kintire* to *ILA*. All his followers could not flee, because *Mr Donald Campbell* had ceased (*seized*) upon many of the boats. *Argile*, finding it dangerous to remain long in the fields, winter drawing one, for it now was mid-October, and his company dissolving, practised with *Mackgilespicke*. *Col* rendered THE CASTLE OF DUNNIVEGE, *Coline Campbell of Kilberrie*, and himself to the Earle.'

A number of ORIGINAL PAPERS are appended to this Trial, which, in addition to those already furnished, afford ample and suitable illustrations of this remarkable passage of History. But for *Mr Gregory's* work, the Editor would have deemed it his duty to have made still further researches. To that gentleman's History, reference is made for the minuter particulars attending that subject, and, in general, for all other topics connected with the Fends and Insurrections which took place in the Isles and West-Highlands.]

Jul. 3.—ANGUS OIG M^cDONALD,¹ Allafter M^callafter, Angus M^callafter, Allafter M^carliche, Johnne M^ccondochie, Johnne Gair M^cmoylane.

Dilaitit of the tressonable taking, keiping, and detening of his Maiesteis Castell of Donyvage, in Yla, and refisting of the Laird of Caddell, his hienes Leutenent and Commissioner, &c.; as in THE DITTAY following:—FORSAMEKILI. AS, thay, accompaneit with *Coill M^cgillespick* and vperis, pair complices, all rebellis and brokin men,² to the number of ffyftie perfones or pairby, in the moneth of November last, maist tressonabillie convocat thame selffis in airmes, come fordwardis in oppin and arrayit battell to his Maiesteis Castell and strentth of Dynnievaig, in Yla; and pair, be craft and policie, tuik in the said Castell, whilk thay stuffit³ and furneissit with muscattis, hagbuttis, poulder, leid, and vper weirlyk furnitour,⁴ for halding pairof: Quhilkis tressonable practizes, sa interpryfet be thame and thair complices, being maid knawin to the Lordis of his Maiesteis Secreit Counsell; and thay, for redres of the saidis rebellis enormiteis, haifing directit the Laird of Caddell,⁵ with companeis of wageit men of weir, as Leutenent to his Maiestie, with ane Herauld,⁶ and trumpettar, to charge thame, in his hienes name and autoritie, to rander the said Castell, and to recover the samyn fyrrth of pair handis. LYK AS, the said Leutenent with his forces, togidder with the said Herauld and trumpeter, haifing cum to the said cuntrie of Ilay, to the effect foirsaid, the foirnamet perfones, with pair rebellious associattis, vnderstanding pairof, directit furth ane grit number of pair rebellious cumpany aganis the said Herauld and trumpeter, and maist tressonabillie stayit and interruptit thame fra cuming fordwardis to be said Castell, for geving of the said charge; quhairthrow, for feir of pair lyfes, thay durst nocht cum fordwardis to the said hous: Lyk as, eftir his Maiesteis Leutenent had plantit him self with his forces round about the said Castell, and had salutet the saidis rebellis,

¹ See May 13, 1609, &c., and Note to the Introduction to *Sir James Makconell's* Trial, Vol. III. p. 1, &c.—and Vol. I. p. 224, where the Trial of *Angus Makconell*, his father, occurs. ² Outlaws, and men attached to no particular Clan, who, for pay and the hope of plunder, would join in any enterprise. ³ Provisioned. ⁴ Furnishing; provision. ⁵ Campbell of Calder, or Caddell.

⁶ Robert Wynrahame, Albany (Ylay) Herauld.

being pairin, with nyne scoir schottis of ordinance, schote be thame pairat, the saidis persones on pannell, nochtwithstanding of þe said Assault maid be þe said Lieutenant to þe said Castell, maist tressonablie held out, keipit and detenit þe samyn aganis him, he being cled with his Maiesteis authoritie, as Leutenent and Commiissioner, for releifing pairof; and tressonabillie schote furth agane, out of þe said Castell, at þe said Leutenent and his companie dyuerse schottis of muscattis, and pairwith slew *Capitane Craufurd*, with foure vther of his Maiesteis faithfull servandis and subiectis, quha war in seruice with the said Leutenent, in the executioun of his Commiission. AND the saidis persones on pannell, and ilk ane of thame, ar airt and pairt of the saidis tressonable crymes.

My Lord Aduocat producet the Dittay, with the roll of the Assyse; and desyret proces.

ASSISA.

Mr Rannald Bayne, burges of Edr, Huchoun Frazer of Kilboig, James Sprewle of Cowden, Andro Meldrum of Dumbrek, Williame Cunningheam of Dolphingtoun.¹

The Aduocat, for verificatioun of the Dittay, producet the pannellis Depositiones, and takis instrumentis vpon the production thair of, &c. And protestis for Wilfull Error, gif thay acquit.

VERDICT. The Assyse, all in ane voce, be the mouthe of the said James Sprewle, chancellor, ffind, pronuncet, and declairit the saidis persones on pannell, and ilk ane of thame, conforme to thair awin Depositionis, and approbatioun thair of in judgement, to be ffylet, culpable, and convict of airt and pairt of the haill tressonable crymes contenit in the Dittay.—SENTENCE. To be tane to the Mercat croce of Edr, and thair to be hangit vpon ane gibbet, quhill thay be deid: And all thair moveable guidis to be escheit and inbrocht: And all thair landis, heritages, and annuelrentis pertening to thame, to be sforsaltit to his Maiesteis vse, &c,

APPENDIX OF DOCUMENTS,

ILLUSTRATIVE OF THE TRIAL OF ANGUS OIG M^cDONALD, &c.

I. OFFERIS *to be presentit to our maiest gracious souerane and his hienes honorable Counsell, in the name of Angus M^cDonald of Durnavaig, his freindis and followeris.*

FIRST, with all humelite, I adheir to my former OFFERIS, maid and subferyuit with my hand, in presens of THE COUNSALL, at *Glasco*, in the yeir of God I^m.Vj^c. and fyf yeir, and delyuerit to *my Lord of Skone* to haif bene schawin to HIS MAIESTIE; promeing to performe euery heid of the samin.

Secondlie, I offer my self to abyid the tryell of the lawis of this HIS MAT^{ES} realme, twiching my obediens to his hienes and *Counsellis* derectiounes, in all poyntis; and keiping of all dewateis appertenyng to a loyall subiect, ewir sen HIS M^{TE} past to mak residens within his hienes kingdom of ENGLAND.

¹ The remainder 'burgesses of Edr.'

Thridlie, feing I haif compleitlie payit all bygane males¹ of his hienes propper landis, within IYLA and KYNTYIR, pofellit be me, heirtofoir, and hes obtenit HIS MAT^{ES} *Controllerris* discharge thairof, I offir, in lyk manir, in all tym cuming, during my lyftym, to mak thankfull payment of the full Rentall of the faidis landis, wnto the quhillkis I and my foirbeiris hes bene kyndlie tenentis;² and that termelé and yerlé,³ wnder the pane of tynfall⁴ of all kyndis of rycht, tytill, or poffeffioun that I can cleame to ony landis within ony pairt of HIS MAT^{ES} dominionis; his hienes refpecting for the present *the Waf landis of IYLA*, quhill thai be pleneischt and manwrit.⁵

Ferdle, I offir fufficient cautioune, within *the Law-landis*, that I falbe obedient to the lawes of this HIS MAT^{ES} cuntré of SCOTLAND; and to that effect, fall compeir befor *the Counfall* of the faid realme, vpone lauchfull premonitione, quhairfoewir the famin fall fit.

Fyftlé, I offir to concur with thais quhomvnto it fall seme guid to (his) hines to gif Commiffiounne, with my haill freindis and followaris, and to fet fordwart and afift sic reformationne of the barbarité of thir cuntreis of THE WAST and NORTH IYLES of this HIS MAT^{ES} kingdome of SCOTLAND, as it fall pleas his hienes beft to dewyfe, be thir presentis, fubferyith with my hand, AT KILNACHITANE, IN IYLA, the aucht of September, 1606. ANGUS M^CDONALL of Dwnewaig.

II. LETTER, *Angus M^cdonall of Dwnwaig* to THE KING. Sep. 10, 1606.

PLEIS 3OUR EXCELLENT MAT^{IE},

IT is knawin to 3OUR MAT^{ES} honorabill *Counfale*, within 3our hienes realme of *North Britane*, quhat hes bene my behaviour evir fen 3our hienes past out of thir the North pairtis of 3OUR MAT^{ES} dominoun; how many futtis, and how mony offeris of all dewiteis that it become a loyall fubiect to his dred fouerane, I haif maid to pair Lo.; and how that, efter I haid fullilie fatisfeit and compleitlie payit all byrun maillis addebtit be me to 3OUR MAT^{ES} *Comptroller*, I obtenit his discharge pairupoun. I fend with his lo. to haif bene presentit to 3OUR MAT^{IE} certane Speciall OFFERIS, fubferyuit with my hand, befor 3our hienes COUNSALE in *Glesgw*, in the moneth of Junij, 1605, of the quhillk I haif as 3it receavit na anfuer nor⁶ quhat 3OUR MAT^{IE} refoluis and derectis me to do; and being refufit of Licenche to haif cum and presentit my felf perfonalie befor 3our hienes, to haif maid my awin fupplicatioun out of my awin mowth, I am enforceit to mak the famyn be a mediat perfone, *my Lord Bifchop of the Iyles*,⁷ quhome-by I haif gewin credeit to offer, in my name, to 3OUR MAT^{IE} my lyfe and all pat I may command, to be vfit as it fall pleife 3our hienes direct; befeiking 3OUR MAT^{IE}, for the caufe of God, to refpect my aige and puir eftait, and to lat me knaw 3our hienes awin mynd, signet with 3OUR MAT^{ES} awin hand; and gif it mycht pleife 3OUR MAT^{IE} to continew me the poffeffioun of thais kyndlie rowmes,⁸ quhillkis my forbearis⁹ and I hes haid of 3OUR MAT^{IE} and 3our hienes royall progenitouris, I fall nocht onlie paye the dewiteis and maillis vfit and wount pairfoir, bot also fall find fufficient fouertie for obedience to 3OUR MAT^{ES} lawis, in all poyntis, and in all tyme cuming; or vpirwayis, that it mycht fein guid to 3OUR MAT^{IE} to let me kend,¹⁰ how and quhairupoun I fall leive; for it falbe knawin, I fall feik na vther refuge bot onlie 3OUR MAT^{ES} clemencie, nor na vther leiving bot that quhillk of 3OUR MAT^{ES} princelie liberalitie it fall pleis 3our hines beftow vpoun me; as at mair lenth the beirar will informe 3OUR MAT^{IE}. And fua, I befeik God to blifs 3our hienes with a long and prosperous ring.

3OUR MAT^{ES} maift humbill and obedient fubiect,

IYLAYE, the tent of September, 1606.

ANGUS M^CDONALL of Dwnwaig.

¹ *Mails*, rents, fen-duties, &c.

² Feudal Tenants, termed *kindly*, from the circumstance of their being *natives*, born on those lands which had been possessed by their ancestors for many generations. Such persons were seldom ejected, so long as they paid the almost nominal rents of those lands, which they were thus permitted to occupy by a sort of hereditary title, after the decease of the former tenant. They were styled *Nativi* in old Charters.

³ Termly and yearly.

⁴ Loss; forfeiture.

⁵ Stocked and manured.

⁶ Than.

⁷ ANDREW KNOX, of the family of

Ramfurly, who had been Minister of Lochwinnoch and Paisley, was appointed Bishop of the Isles, Apr. 2, 1606, having been the first Protestant Bishop of that See. Reference may be made to the Trial of Sir James Mackencill, *Appendix*.

⁸ Possessions held by him as '*kyndlie Tenant*.'

⁹ Ancestors.

¹⁰ Know; understand.

III. LETTER, *the Privy Council to THE KING.* May 27, 1608.

MOST SACRED SOUERANE,

THIS beirar, *the Bifchope of the Ilis*, haueing the occafion to repair to your Maieftie for fome materis concerning the feruice in THE ILIS, We haif committit vnto him the relatioun vnto your sacred MAIESTIE how far we haue procedit in that bufynes, and what courfe is tane for the furtherance and profequation of that feruice, vnto whose fufficiencie remitting all thingis, We pray God to grant vnto your Maieftie, efter a long and happy reigne, eternall felicitie. FROM your Maiefties burghle of EDINBURGHE, the 27 of May, 1608.

Your Maiefties moft humble and obedient fubiectis and feruitouris,

AL. CANCELL^S. ABERCORNE. J. BALMERINO^T. D. SCONE.

BEWLY. HALYRUDHOUS. JO. PRESTOUN.

TO THE KINGIS moft excellent MA^{TIE}.IV. LETTER, *Lord Wchiltrie to THE KING.* May 27, 1608.

MOST SACRED AND GRATIOUS SOUERAN,

I RESSAVID your MA^{TEIS} Lettir, with *Alifjer Ogis* Remiffiounne, and falbe cairfull to gif vnto your MA^{TIE} full contentment and fatisfactiounne in everie particular of the Letter. I haif reteinit the Remiffiounne in my handis, quhill I haiff ane certaintie of *Alifjeris* conformitie; quhairin I expect to find him anfuerable, in fome meafour, to that great favour quhilk it hes plefit your MA^{TIE} to beflow wpone him. In all wtheris your MA^{TEIS} directionis, quhairin it fall pleis your sacred MA^{TIE} to burdene me, I fall haif ane fpeciall cair and regard to approve my felff worthie of that trust quhilk your hienes repofis in me; having na wthir thing zit to acquyt your heines inestimable favours, bot ane hart difpofit, in all finceritie, to difcharge that dewtie quhilk your MA^{TIE} expectis, and quhilk to my awin credit appertenis, and to facrifice my lyffe and all that I haiff, in the executiounne of all your MA^{TEIS} royall directionis. And fua, recommending your sacred MA^{TIE}, with your royall progenie, to the protectionne of God, I reft

50^r Maties moift humbill and obedient feruitour,

EDINBURGH, the xxvij of Maij, 1608.

AL. WCHELTRIE.

TO THE KYNGIS moft excellent MA^{TIE}.

V. 'COPY of THE LIEUTENNENTIS LETTER to the Counfall, to be fend to Courte with Sir Alexander Hayis Letter, &c.' Aug. 18, 1608.

PLEIS your LORDSCHIPS,

I CAUSIT wey oure ankeris and depairtit from YLA the 14 of this instant, at efter none, and arryved at *Dowart*, in MULE, the 15 of the fame monethe; and that with gryte difficultie, in refpect of the greateft tempeft of wedder and contrarie tyddis, quhairby we wer put in great dangeir all pat nycht; quhairthrow I failit downe ane of the maffis of my awne fchippe. Att oure out-comeing from YLA, we mett *the Ingliſhe gallay*, with ane vther ſhipp, that caryis the munitionn and ordinance, the quhilk gallay, yf it haid not pleafit God to haif givin hir that luke¹ to anker in *the Sound of YLA*, ſho could not haif efchaipit faiff, in refpect of the gryte tyddis heir, and hid gait to pas throw, the quhilk ſho appeiris to be verie vnmeit: And finding hir nawife fufficientlie furneiſt with victuall, to remane heir to await on this ſervice, yf it war bot for the ſpace of aucht dayis; and not being certane of ony victuallis to come heir to furneiſh hir, bot onlie, at my ſpeciall requieſt, *Sir Williame St Johnne*, HIS MAIESTEIS *Admirall* heir, hes tane vpoun him, out of his awne furnitour,² to ſupplie hir with viveris, quhill bak advertעיſment come from your Il.; and ſeing we have no ſervice in thir *Ylandis* that ſho is meit for, and knowing hir to be gryte expenſis to HIS M^{TIE}, vpoun the avעיſement with *the Admirall*

¹ Luck; good fortune.² Provision.

and remanent *Capitaneis* of THE *INGLISHE FLEITT*, and especialie with him wha is present *Governour* of hir, wha be painfull experience knawis, and hes declairit to ws, how difficle it is to keepe hir saiff, vncassin away, lett bee to do ony good office with hir, I haif thocht good to crave your ll. aduise, quhiddir sho salbe direct bak agane to ENGLAND, with all expedition, as we think all expedient—or yf sho fall be continewit heir—and to what vse, and how sho salbe furneist—for we knaw not. As to the ship caryare of the batterie and instrumentis apperteneing thairto, albeit we think not meit to keepe the ship heir, bot remit hir bak with the gallay, for hir better preservation, yit, for fundrie caussis tending to the forder and finall ending of this service, we think it expedient to keep the munition with the instrumentis, the quhilk I fall fie to be put in sic furitie, as I salbe answerable to HIS MA^{TIE} and your ll.

Thir thingis I haif thocht good to communicat vnto your ll., imparting vnto your ll. oure opinioun heir, and craving your ll. forder resolutioun in the premisses, quhilk I think, God willing, to follow furth. Vpoun the 16 of this instant, I directit Commissiounaris to the *Houfe of Dowart*, quhairin McCLAYNE haueing his residence for the tyme, promesit to delyuer the Houfe; the quhilk he did vpoun the 17 of this instant. I ressaueing the same, hes furneist with men and viveris that Houfe to be keipit during HIS MA^{TIES} and your ll. pleafour. I haif proclamit Courte to be haldin, the xxij of this instant, in *Arrofe of MULL*, when I think, be Godis grace, to tak ordour with pat Yland, in executioun of pat pairt of my Commissioun, in distroying of lumsfaddis,¹ birlingis,² and Hieland gallayis.

I find this ane gryte difficultye, that in respect of the great nomber of theis vashellis, quhilkis ar intertenyt vpoun the mayne-fhoir, quhilkis ar so offensive to the *Yllismen*, that onles thay keepe the lyk counter with pame, thay can not eschape thair oppressioun, nather can I iustlie spoile pame pairof, vnles the lyk ordour be tane with these that ar vpoun the mayne-fhoir, opposith to THE NORTH and WEST YLLIS; and thairfoir, yf it wald pleis your ll. to gif me lyk pouer and Commissioun, for the abolishing of sic vashellis vpoun the mayne-fhoir, as I haue with in THE YLLIS, I fall do accordingly with boith. The quhilk Commissioun I expect, with diligence; into the quhilk Commissioun, I wald desyre your ll. to include the intaking and assedging and dimoleishing of all sic Houffis vpoun the mayne-fhoir, apperteneing to ony Yllifinan, or that may be ayd or ressett to ony fugitiue rebell out of THE YLLES.

I will not trouble your ll. with farder Letteris quhill mair occasioun be offerit; bot, requeisting your ll. to haif bak answer, becaus I can not depart out of this Yll, withoute ressett of the same, I rest,

Be your ll. alwise to be commandit,

DOWART, in Mull, 18 August, 1608.

A. VCHILTRIE.

VI. LETTER, the *Privy Council* to THE KING. Oct. 6, 1608.

MOST SACRED SOVERAYNE,

THIS Nobleman, the Lord Vchiltrie, whome it pleasit your heyne to prefer to the charge of Leutenandrie of THE YLLIS of this your Maiesteis kingdome, hes, with verie greate cair, pane, and travellis, and with greate hafaird of his persone, broght that seruice to ane goode perfectioun, by the entrie and exhibitoun befor ws of a noumer of the principallis and Chiftanes of THE YLLES; and by his awne promeis and Band, to mak some otheris of thame, whome he hes not presentit, answerable and obedyent; as mair particularlie he will informe your sacred MA^{TIE}. And sua, recommending him to your Maiesteis gracious regaird and consideratioun, We pray God to blisse your sacred Maieste with all happynes, and restis for evir,

Your Maiesteis most humble and obedyent subiectis and feruitouris,

AL. CANCELL^S. ARGYLL. CRAFT. BUCKLUGHE. ABERCORNE. BLANTYRE.

EDINBURGH, 6 October, 1608.

TO THE KINGIS most excellent MAIESTIE.

¹ Lymphads.

² A *birlin* is a small sort of vessel, peculiar to the Western Islands of Scotland.

VII. LETTER, *the Privy Council to THE KING.* Oct. 13, 1608.

MOST SACRED SOUERANE,

THE beirar, *the Bischop of the Yllis*, having the occasioun to repair towardis your sacred MAIESTIE, we haif thocht meit to accompany him with this our testimonie and approbatioun of his dewtiful cariage and behaviour in your MAIESTEIS seruice, in THE YLLIS, wherin he hes caryed him selff with verie goode credite and reputatioun; and is able, be his counsell and advyse, (in respect of his awne credite and freindshippe among the Yllismen,) to do vnto your MAIESTIE goode seruice thair. And sua, recommending him vnto your sacred MAIESTIE, and most humilie beseiking your heynes to heir him, in fuche thingis as he will propone, anent the prosequitioun of this seruice, We pray God to blisse your sacred Maiestie with all happynes and felicitie, and restis for ever,

Your Maieftis most humble and obedyent subiectis and seruitouris,

AL. CANCELL^s. ROSS. TORPHECHIN. BUKCLUGHE. HALYRUDHOUS.CL^s. REG^{ri}. A. ELPHINSTON. S. T. HAMILTON. JO. PRESTOUN.

EDINBURGH, 13 October, 1608.

TO THE KINGIS most excellent MAIESTIE.

VIII. THE COPIE ANGUS OGE's *first* LETTER to *Sir Oliver Lambert.* (No date.)

MY HONORABILL GOOD LORD,

I HAVE receavet your Letter, and hes vnderstand be your meaning, that ye wuld lawe me to rander this Hous to yow into THE KYNGS name. My Lord, as to that, if I had not receavit ane better Warrant frome *my Lord Chancellor and Counsell of Scotland* to rander thame this Hous OF DUNY-WEGE, I wald obey your lo. or any wper subiect, hawing his MAIESTEIS Warrant. My lord, if ye doubt of this, send me your awin Secretar, or anie wper pat can reid, and I shall let him sie my Warrant frome *the Counsell*, desyring me to keip this *Casell*, wnto the tyme that his MA^{tie} wilbe¹ declairit to me. The quhillk my Warrant fall testefie. And if yow will trouble me, efter I have obeyit his highnes will, be yow assurit that I fall complayne to his MA^{ties} *Counsell*. Not troubling your lo. any forder, comitts yow to God. FROME DUNYWEGE, the 14 of this instant month. And if ye will send any of your awin men, ye fall have frie passage to pas and repas to and fro.

Your friend, to your deserwing,

ANGUS OG MACDONALL.

IX. EXTRACT from MINUTES of *Privy Council Proceedings.* Apr. 1614.

THE HOUSE OF DUNYVEG, in YLA, being possessed and kepted be THE BISCHOP OF THE YLES his brother, and two or three servandes, the same Houfe hes bene of late surpryfed and tane be one *Ronnald Oig*, alegeand to be Bastard sone to vmq^{le} *Angus M^cconcell of Dvnyveg*, whom the said *Angus* did neuer, in his tyme, acknowlege to be his sone. This *Ronnald*, being a vagabound fellow, without any certane residence, come latelie to YLA, and finding the Houfe to be but slenderlie kepted, refolued to surpryse and tak the same: And for this effect, he and his complices, being four or fyue in nomber, retered thame selues to ane wood, neare by the Houfe, whair thay made some laderes, and with thame, one day, airlie in the morning, thay clam the vtter wall, kepted thame selues obscure whill the yettes were opined; and then they took the Houfe, and put *the Bischopes* folkes oute thereof. The reporte whereof coming to young *Angus M^cconcell*, lauffull brother to *Sir James*, who wes within sex myles of the Houfe for the tyme, he immediatlie, according to the cuntrye fasshoun, send the Fyrecrofe² athorte the countrye, warning all the countrye people, who wer affected to HIS MAIESTEIS obedience, to ryfe, and concur with him in the recouerie of the Houfe. And so he, with such assistance as come to him, inclosed the Houfe. Thay within held good for sex dayes, being weel prouyded

¹ Probably this should be read, "wnto the tyme that his MA^{ties} will salbe."

² The Fiery Cross. See the *Lady of the Lake*, and other works of Sir Walter Scott, for illustrations of this remarkable custom.

with pulder, lunt,¹ and bullett, whereof thay fand good flore in the Houfe; and thay wer prodigall anough in bestowing the same vpon the befeagares; bot in end, perceaucing that thay war not able to keepe the Houfe, thay in the night eshued² at a bak yett, in a litle boat with sex oares, which lay at the Castell; and took with them such goodes as thay fand in the Houfe.

Angus followed thame, bot what farder has fallen oute, is not as yitt come to *the Counfelles* knowledge. *Sir James M'conceill* is *the Counfelles* informar of all this busynes; and as he faves his brother hes offered to delyuer the Houfe bak againe to *the Bishopes* seruandes, who refused to ressaue the same. *The Counsell* haueing hard at lenth *Sir James* discourfe, made in this earand, and looking thortlie to heere from *the Erle of Ergyle*, or els frome *the Bishope*, the constant and certane truthe of all this mater, thay haue referued all deliberation hearin, till thay heere from *the Bishope* or *Erle*.

X. SIR JAMES M'DONALD HIS OFFERIS.

FIRST, I offer, if it might please HIS MATIE of his clemencie to give me ILAY, I would pay eight thowfand merkis yearlie thairfoir; and find sufficient caution of Lordis and Barrounes for good payment and obedience, be my selfe, and all THE CLANNIS that shall dwell there: And craves but a fevin yeare Tak, to try me.

Secondlie, I offir, if HIS MATIE please to hold ILAY in his awin hand, to mak it worth Ten Thowfand merkis yearlie to HIS MATIE; and to transport my selfe, my brethir, and my kin to IRELAND, or to whatsumewir other place HIS MATIE will appoynt ws; and his highnes to give ws one yearis duetie or rent of ILAY, to by land with; and in the mein tyme, I shall go with *the Bishop* of THE ILES, and shall, God willing, ather get the Houfe and his pledgis, without any chairgis to HIS MATIE, or than returne heir to mynd my owne waird, within fourtie dayis. Provyding, if I get this done, I haue assurance of HIS MATIE and COUNSALL, that my self and my brothir shall get leave to go, presentlie thereafter, with my lord *Bishop* to Courte, and get a kifs of HIS MATIE hand; and my cautionaris shall remaine bound for me, that I and my brother shall returne bak heir to HIS MATIES COUNSALL, to abyid such order as it shall pleas his highnes to injoyne to ws. And I shall leive my sone heir, as pledge for my performance in all, and for satisfacioun to HIS MATIE and COUNSALL. I shall bring *Rannald M'allaster*, who first took the Houfe, and *Ronnald M'donald Vallich*, to suffer for their fault; and *Coll M'gillaspie* to be kept in Irnes, during HIS MATIES pleasour. My cautioneris falbe *the Erle of Tullibairne*, *Lord Burlie*, *Sir Ronnald M'Sorte*, *Johnne Campbell of Cadell*, *Malcum Tofhe*,³ and *the Laird of Grant*; every one for Fyve Thowfand merkis—and my sone to die if I faill.

And last, I offer, without ony condition of land or money, that if it please HIS MATIE to give me libertie, vpon such suretie by cautioneris as I am able to performe, or pledgis, I shall transport my self and my brothir and kin out of all HIS MATIES dominiounes, having HIS MATIES Letter of Recommendation to THE ESTAITTIS OF HOLLAND; and libertie to tak vp men, if we be imployit; with HIS MATIES frie pardoun for all byganis.

Fire-raising—Theft—Reset of Theft.

Jul. 14.—JOHNNE M'ALLASTER M'JAMES, in Daill of Rothiemurchus;
Andro M'allaster M'James, in Kynveachie; Johnne Dow
M'kay, in Duchill.

Dilaitit of airt and pairt of the tressonable Raifeing of ffyre, Burneing and destruccioun of the Houffis and bigingis pertening to vinq^{le} George Dunbar in

¹ Match.

² Escaped; eschewed.

³ Probably meaning *the Laird of MacIntosh*.

Clwne; and thiftious Steilling and away-taking of the hail infycht and pleneiffing, guidis and geir, being within the faidis Houffis, to the avall of ane thowfeand merkis; at the leift, of the thiftious Refetting of the faidis guidis and vtheris contenit in the Letteris direct thairupoune, eftir the thiftious steilling thairof be David McWilliam and his complices; committit in October, 1598 5eiris.

PERSEWAR, Mr Robert Dumbar, fone to the said vmq^{le} George Dumbar.

The Justice, with advyse of my lord Aduocat, continewis this matter to the thrid day of the next Justice-air of the schereffdome of Innernes, quhairin thay duell, or foner, vpon xv dayis wairning, to vnderly the law for the crymes aboue fpecifeit: And ordanis cautionoun to be ffund for the defenderis compeirance to that effect; vnder the panes contenit in the Actis of Parliament.

Johnne Roife of Glenbeg, as cautioner for the entrie of the perfones on pannell, tuik instrumentis of thair entrie; and protestis he may be fred of his cautionrie. Gregour Grant of Gartmoir become fouirtie, that thai and ilk ane of thame fall compeir, &c.

[*Sir Williame Heart, Justice-Depute.*

ASSESSOURIS to the Justice, in this cause,—MY LORD ARCHEBISHOP OF ST ANDROIS; SIR GEDIONE MURRAY, Thesaurar-depute; MY LORD CLERK OF REGISTER, (Sir Alexander Hay of Whitburgh); MY LORD OF KILSYTHIE.]

Treasonable Resetting of Jesuits and Trafficking Papists, &c.

[AFTER the details which have already been given in the Case of OGILVIE,¹ it seems unnecessary to occupy farther space in attempting to elucidate the present Trial. It must, however, be interesting to the reader that there should be preserved, in this place, some remarks made by *Calderwood*, in his larger MS. History,² which strongly depict the popular feeling, in relation to these State prosecutions against the Jesuits.

‘William Sinclair, Robert Wilkie, (and) Cruikshanks were convicted, upon the fourteen of August, for Resetting *the Jesuits* above named, and hearing of Massé. The day following, betwix four and five afternoone, they were brought furth, with their hands bound, to the Scaffold, sett up beside the Crosse, and a gallows in it, according to the custome of Executione. While a great multitude of the people was gazing to see the Executione, there was a Warrant presented to the Magistrates of Edinburgh, to stay the Execution; soe they were carried back again to their wairds. The people thought this forme of dealing rather mockery then punishment!’]

Jul. 14.—WILLIAME SINCLAIR, agent in Edinburgh; Robert Wilkie, browdinst³ in the Cannogait; and Robert Cruikshank, staibler in Ed^r.

Dilaitit of the treffonable Resetting of Mr James Moffett, Mr Johnne Ogilvie, and Mr Johnne Campbell, Jesuites and Traffiqueing Papistis, within thair duelling houffis, dyuerse dayis and nychtis, in the monethis of August, September, and October lastbypast, &c. viz.

DITTAY against the Pannel.

FORSAMEKILL AS our most gracious and sacred Souerane lord, furth of pat godlie zeill ever borne

¹ See his Trial, Vol. III., p. 330, &c.

² Church Hist. MS., Adv. Library.

³ Embroiderer, a lucrative employment in those times; not browster, or brewer.

be his Maiestie to pe maintenance of the trew RELIGIOUN, presentlie (to the honour and praise of Almychtie God) professit and establischet within this Kingdome, and for the ruteing out of all Papistcall and Idolatrus Religioun, with the blinded professouris pairof, furth of the samyn; be mony godlie lawis and Actis of Parliament, deulie maid and publeist, alsweill in his hienes minoritie, as since his acceptatioun of the governament in his awin persone, hes nocht onlie expresse statute and ordanit, that na professit JESUITE, SEMINARIE PREISTIS, nor TRAFFIQUEING PAPISTIS (being all suorne ennemeis to his sacred Maiesties croun and estait) be fund within this his hienes realme, or ony part of the samyn, vnder dyuerse capitall panes mentionat pairintill; bot lykwayis, be dyuerse vtheris guid and godlie Lawis, Actis, and constitutiones of Parliament, speciallie, be the 120 Act of his hienes tuelf Parliament, haldin at Edr vpon the fyft day of Junij, 1592 5eiris, his Maiestie and Estaitis than convenit, hes, be vertew of the said Act, decernit and declairit, that in tyme paireftir following, the RESSETTING of the saidis JESUITIS, SEMINARIE PREISTIS, and TRAFFIQUEING PAPISTIS, aganis the Kingis Maiestie and Religioun, presentlie professit within this realme, is and fall be ane just caus to infer the cryme and payne of TRESSONE aganis the said receperis:¹ As the said Act of Parliament, ratifeit and approvin in dyuerse his Maiesteis Parliamentis, haldin senfyne, in the selff proportis. AND albeit it be of verritie, that vmq^{le} *Mr Johnne Ogilvie*, alias *Watfone*, *Mr James Moffett*, alias *Halyburtoun*, and *Mr Johnne Campbell*, alias *Sinclair*, all professit JESUITES and MESS-PREISTIS, with dyuerse vtheris of that unhappie and curfet sect, war directit frome ROME, this last 5eir, 1614, be THE POPE and his CARDINALIS, to cum to this cuntrie and vtheris pairtis of his Maiesteis dominiones, to put in executioun, na dout, sum feirfull and treffonabill conclusioun, as perfonas maist meit for sic ane dangerous imployment; and haifing, according to pair commissioun, cum to this cuntrie, in the monethis of Junij or Julij, the 5eir of God soirlaid; quhair, eftir pair cumming pairto, in all pairtis and companeis quhair thay refoirtit, speciallie, the said *Mr Johnne Ogilvie*, ane vyld and abhominable Tratour, quha iusslie ressauit his deseruet pwneifchment, be pair perverse speiches and insolent cariages, maist treffonabillie and oppinlie condampned and disavowit his Maiesteis fouerane autoritie, setting vp and manteining, in place pairof, THE POPE OF ROME his vsurpet power for excommunicatting, deposeing, and dethroneing KINGIS, and absolueing subiectis from the othe² of pair naturall allegiance; intending na les, be thais pair treffonabill speiches and informationes, nor³ to haif waknit and steirit vp ane oppin and feirfull REBELLIOUN. THIR pernicious and unhappie miscreantis, schakin loufe be pe autoritie of pair Generallis, to put in executioun sic treffonabill attemptis, nochtwithstanding of his Maiesteis Lawis and Actis of Parliament maid aganis the recepting of thame and vtheris of pair devillische sect, war, in the monethis of Julij, August, September, and October lastbypast, at the leist, in ane or vther of the saidis monethis, maist treffonabillie ressett, harbourit, and interteneit be 5ow, and everie ane of 5ow, viz. the saidis *William Sinclair*, *Robert Wilkie*, and *Robert Cruikshank*, within pair (5our) duelling houffes, in maner as followis; that is to say: THE said *Mr James Moffett*, alias *Halyburtoun*, ane professit JESUITE, a PREIST, and TRAFFIQUEING PAPIST, haifing cum to this burgh of Edr, to pervert, be his erroneis doctrine, our fouerane lordis subiectis fra pe trew RELIGIOUN presentlie professit, was, for that effect, maist treffonabillie resset, harbouret, and interteneit be the said *William Sinclair*, in ane or vther of the saidis monethis of Julij, August, September, and October lastbypast, dyuerse dayis and nichtis, within his duelling hous in Edr; and all necessar comforte, releif, and intertenement ministrat to him, at all occasions, as gif he had bene (ane of) his Maiesteis faithfull and loyall subiectis and professouris of pe trew RELIGIOUN; eftir he was knawin to pe said *William Sinclair* and his wyfe to be of the contrair⁴ RELIGIOUN, be pe informatioun of ane James Colt, he keipit daylie focieatie and companie with pe said JESUITE, vpon the stretis, keipit tryflis and meittingis with him and with the said vmq^{le} *Johnne Ogilvie*, ane notorious Tratour, within the duelling house of *Robert Wilkie*, in the Cannogait, and duelling hous and stable of *Robert Cruikshank*, and within the Abbay

¹ Receivers; resettters.² Oath.³ Than.⁴ Opposite; adverse.

3airdis, and in dyuerse vtheris pairtis of this burgh of Edr and suburbis pairof; committing pairthrow, maist oppin and vnpardonable Tressone, and according to the said Act of Parliament, incurring pairthrow the panes and puneischment expressit pairintill. LYK AS, the saidis *Mr James Moffett*, *Mr Johnne Campbell*, and *Mr Johnne Ogilvie*, all professit and avowed JESUITES, war, in ane vther of the saidis monethis, tressonabillie reffett, hurdit,¹ keipit clofe, with thair horffis and provisoun, be the said *Robert Cruikshank*, staibler, within his duelling hous and stable in Edr, be the space of dyuerse dayis and nychtis, war interteneit be him pairintill, and furneist with all maner of conforte, help, and releiff, according to his habilitie, committing pairthrow, oppin and manifest TRESSONE, conforme to the said Act of Parliament. AND siclyk, the saidis *Mr James Moffett* and vmq^{le} *Mr Johnne Ogilvie* war maist tressonabillie reffet, harbouret, and interteneit, in ane or vther of the saidis monethis, be the said *Robert Wilkie*, within his duelling hous in the Cannogait, of certane knowlege that thay war JESUITES, infasar as three feuerall MESSIS² war said be the said *Johnne Ogilvie*, within 5our chalmer, of 5our speciall knowlege; to the quhilkis MESSIS, dyuerse persones maid pair resoirt, and the said Robert keipit the dur, and was quhyles within and quhyles without. BE the wilfull and tressonable Ressetting of the quhilkis JESUITES, SEMINARIE PREISTIS, and TRAFFIQUEING PAPISTIS, professit and avowed enemeis to his Maiesteis persone, Croun, and estait, and trew RELIGIOUS presentlie professit, and that within thair duelling houffis, and vtherwayis, as is aboue declairit, the soirsaidis persones, and ilk ane of thame, according to the tennour of the said Act of Parliament, hes incurret the pane and pwneischment of TRESSONE, viz. to be pwneist and demanit³ as Tratouris, and pair haill landis and guidis fforfalt and escheit to his Maiesteis vse; to the terroure of vtheris to abstene fra the lyk heireftir.

WILLIAME SINCLAIR, eftir reiding of the Dittay, declairit, that it is of treuth that he hes offendit God and the Kingis Maiestie, by Ressetting of *Mr James Moffet*, Jesuite, in the moneth of October last; quhilk he did only vpone simplicitie:⁴ And denyis the Resset of *Mr Johnne Ogilvie*, or *Mr Johnne Campbell*, Jesuites, at ony tyme: As also, denyis the Ressetting of the said *Mr James Moffet*, in the monethis of July, August, and September, set down in the Dittay. My lord Aduocat acceptis his Confessioun, in that he acknowledges his Ressetting of Moffet, in the moneth of October; and adheris only thairto, aganis Williame Sinclair.

It is allegit be Williame Sinclair, for him selff and remanent persones vpone pannell with him, that the Dittay is nocht relevant, nather can the samyn be put to the knowlege of ane Assyse, except it war speciallie condiscendit thairin, that *Mr James Moffet* said Mefs, and was a traffiker aganis the Kingis Maiestie and the Religioun.—It is answert be my lord Aduocat, the allegiance aucht to be repellit, in respect of the Dittay and Act of Parliament, beirand distinctlie, that nocht only the Ressetteris of the Sayeris of Mefs committis Tressone, bot also the Ressetteris of Jesuites, Seminarie Preistis, and Traffiking Papistes aganis the Kingis Maiestie and Religioun, committis Tressone. And trew it is, that the said *Mr James Moffet* is ane notorious Jesuite, and ane traffiker aganis the Religioun professit within this realme, as is confessit be the said Williame Sinclair

¹ Literally, *hoarded*; concealed with extreme caution, as one would a hoard of money. ² Masses.

³ Used; treated.

⁴ Goodnature; without any treasonable intent.

him felf, in his awin Depofitioun, beirand, that Moffet declairit to him, that he was cum to this cuntrie to venter his lyfe for the faiftie of faules that war in danger ; and fa, was fufficientlie knawin to the faid Williame, that he was ane Jefuite and traffikeing Papift aganis his Maieftie and Religioun : Be recepting of the quhilk Jefuite thaireftir, he has fallin vnder the danger of the faid Act of Parliament.

It is forder allegit be the pannell, that he can nocht pas to ane Affyfe for the Recepting of Jefuites, except, conforme to the Act of Parliament, made in anno 1593, cap. 164, he had refset thame, *fcienter et prudenter*, be the fpace of thre nychtis togidder, or thre nychtis at feuerall tymes ; be the quhilk Act, it is provydit, that gif it be fa tryit,¹ that the perfone convict for the *firft* falt, his efcheit fall fall ; ffor the *fecund* falt, fall amit² his Lyfrent ; and (ffor) the *thrid* falt, fall incur the crymes of Treffone. And thairfore, except the faid Recept be fa tryit, the Dittay is nocht relevant.—It is anfuerit, that the allegiance aucht to be repellit, in refpec the faid Act of Parliament nawayis derogattis the Act of Parliament quhairupoun the Dittay is foundit : And thairfoir, nochtwithftanding of the faid allegiance, fould pas to ane Affyfe.

It is forder allegit be the pannell, that be the Act of Parliament maid in anno 1600 5eiris, cap. 18, thair can be na forder exactit of the Recepteris of Jefuites, bot ane pecuniall payne ; quhilk he is content to pay, accoirding to the Lordis modificatioun : And thairfoir, the Dittay for Treffone can nocht pas to an Affyfe.—It is anfuerit, that the allegiance aucht to be repellit, nochtwithftanding of the faid Act quhairupoun the famyn is foundit, in refpect the famyn nawayis derogatis the Act of Parliament maid be his Maieftie and Eftaittis, in anno 1592, bot ratifies the faid Act in everie poynt.

It is allegit be the pannell, that he can nawayis pas to ane Affyfe for Reffetting of the faidis Jefuites, nather is the Dittay relevant aganis him, in refpect, be ane Act of Parliament maid at Edinburgh, in anno 1609, cap. *quinto*, it is thair planelie explanet and declairit, that all Actis maid offbeoir aganis the Reffetteris of Jefuites, &c. haif full force, and be put to dew executioun aganis the faid Reffetteris, fa fone as intimatioun and denunciatioun beis maid of the faidis Jefuites, Seminarie Priestis, and vtheris contenit thairin, at the Mercat-croce of the heid burgh of the fchyre quhair thay duell, and Mercat-croce of Edinburgh ;² bot fa it is, that thair was na intimatioun nor denunciatioun maid at ony Mercat-croce of the faid *Mr James Moffet* his name, befoir his Reffetting within the pannellis hous, to be ather a Jefuite, Seminarie Preift, or of ony vther ordour : And thairfoir, the faid Dittay for his Recept can nocht pas to ane Affyfe.—It is anfuerit be my lord Aduocat, that the explanatioun repeitit be the pan-

¹ If it fo turns out upon Trial.

² Lose.

³ As the *commune forum*.

nell, fet down in the said last Act of Parliament, nawayis derogatis or takis away the former Act of Parliament maid aganis the Resfetteris, quhairupoun the Dittay is confauet; bot be the contrair, the said Act is Ratifeit, and ordanit to haif frie strenth, effect, and executioun, accoirding to the tennour thair of; and the explanatioun of the said Act, in anno 1609, is only in fauouris of sic as Resfettis Papiftis ignorantlie, nocht knowing thame to be Papiftes, or of ane contrair Religioun: Bot it was fufficientlie vnderftuid to the pannell, befoir *Moffettis* Resfet, that he was ane Catholik ffather, and was cum to venter his body for the Catholik Faith, as is confessit be his Depofitioun: And thairfoir, the said allegiance aucht to be repellit, and the pannell pas to ane Affyse.

INTERLOCUTOR of *Relevancy*.

THE JUSTICE, with advyse of the Assessoris present, Repellis the hail allegances proponit be the pannell; and ffindis the Dittay relevant: And Ordanis the samyn to be put to the knowlege of ane Affyse.

ASSISA.

Thomas Fifer, mercheand bur- ges of Edinburgh,	Robert Halybruntoun, merchand thair,	Dauid Williamefone, elder, mer- cheand thair,
Eduard Johnestoun of Ryhill,	Johnne Inglis, fkyunner thair,	Capitane James Hunter, burges
William Cocherane, mercheand burges of Edinburgh,	Nicoll Vduard, mercheand thair,	thair,
Dauid Mitchell, merchand thair,	William Nemok, tailzeour thair,	Alexander Broun, elder, mer- cheand thair,
Alexander Speir, mercheand thair,	Thomas Weir, peuderer thair,	Jo. Fairlie, younger, burges thair.

My lord Aduocat takis instrumentis of the fuering of the Affyse: And for VERIFICATIOUN of the Dittay, producet the pannellis Depofitiones, viz. the said William Sinclairis Depofitioun, all writtin and fubfcriuit with his hand; and the vther tua Depofitiones maid in prefens of dyuerfe Lordis of his Maiefteis Secreit Counfell, confeffing thair particular Resfetting of the Jefuites, in maner fpecifeit in thair Dittay, and thairupoun askit instrumentis; and proteftis for Wilfull Errour, gif thay Acquit.

VERDICT. The Affyse, all in ane voce, be the mouth of Dauid Williamefone elder, chancellor, ffand, pronuncet, and declairit the saidis *William Sinclair*, *Robert Wilkie*, and *Robert Cruikshank* to be ffylet, culpable, and convict of the trefsonable Resfetting of the saidis Jefuites, in maner fpecifeit in thair Dittay; accoirding to thair awin Depofitiones, producet for verificatioun thair of.

SENTENCE. To be tane to the places of thair Executioun, and thair to be execute to the daith, and vtherwayis demanit as Tratouris: And all thair landis, guidis, and geir to be fforfalt and efcheit to his Maiefteis vfe.

Aug. 15.—THE quhilk day, THE JUSTICE being fitand in Judgement, ane WARRANT was producet be him, and ordanit to be red, quhilk was direct to him fra his Maiefte, &c. viz.

JAMES R.

TO our trustie and weilbelouit SIR WILLIAME HEART, kny^t, deputy Justice generall, in our kingdome of Scotland. QUHAIR AS, Williame Sinclair, Aduocat, Robert Wilkie, imbroderar, and on Cruikschank, a flabiler, ar convicted and condemned of Treasone, for the Wilfull Recept and supplying of Moffet the Jesuite: It is our plesour, that 3e proceed to the finall pronunceatioun of the Sentence and Executioun of the pwneischment provydit by our Lawis in the lyk caices againt thame, with all convenient expeditioun: For doing quhairof, these presentis fall be 3our sufficient Warrant. GEVIN at Sarisburrie, the 26th of Julie, 1615.

For obedience of the quhilk WARRANT, the Justice ordanit the saidis Williame Sinclair, Robert Wilkie, and Robert Cruikschank, to be brocht furth of Waird to the Mercat-croce of Edinburghe; and thair to be Hangit vpone ane gibbet, quhill thay be deid: And all thair landis, heritageis, guidis, geir, and vtheris pertening to thame, to be fforfalt and escheit to our souerane lordis vse, &c.

Eftir the pronunceatioun of the quhilk Sentence, the samyn was intimat to thame be Johnne M^cNacht, bailzie of Edinburgh, to quhome directioun was gevin be the said Justice, for causing put the samyn to executioun, conforme to the Warrant aboue specifreit.

Aug. 30.—BEING of new agane brocht furth of Waird, and presentit vpone pannell, be the Bailleis of Edinburghe, as thay quhais dome and executioun thair of, &c. was of our souerane lordis meir mercie and grace delayit and superceidit, THE JUSTICE, for obedience of his Maiesteis posteriour WARRANT, direct to my lord Archebischope of St Androis, My Lord of Bynning his hienes Secretar. and Sir Gedione Murray his hienes Thesaurer depute, quhair of the tennour followis, pronounced Sentence accordingly.

JAMES R.

WHEARAS, We ar crediblie informet, that Williame Sinclair, ane Aduocat before pe Sessioun, Robert Wilkie, browdinster, and on Cruikschank, ane flabiler, is convict of Treasone, for Resetting of Moffet and Ogilvie the Jesuite: It is our plesour, that Williame Sinclair and Robert Wilkie, be Banischet our dominiones during our plesour: And that pe said Cruikschank be Banischet the toun of Edinburghe during our plesour. GEVIN at Sallsberrie, the xxvij day of Julij, 1615.

Quhilk DOME and SENTENCE, the saidis perfonas, in all humilitie, imbracet and acceptit vpoun thame, &c.

[CURIA Jusficiarie, s. d. n. regis tenta in Pretorio ciuitatis Glasguen. per D. Will. Hecart.]

Treasonable Resetting of Jesuits—Hearing of Mass, &c.

Sept. 5.—SIR JAMES CLEILLAND (KNEILLAND) of Monkland, kny^t, Williame Maxwell of Cowglene,¹ Robert Vrie, wryter, burges of Paislay.

Dilaittit of the tressonable Ressetting of Mr Johnne Ogilvie, Jesuite, within thair duelling houffis: And heiring of dyuerse Messis said be him thairintill;

¹ See their Examinations appended to the Trial of *John Ogilvy*, Vol. III., 330.

contrair the Actis of Parliament ; committet in the monethis of July, August, and September, 1614 yeiris ; at the leift, in ane or vther of the faidis monethis.

PERSEWAR, Sir Williame Oliphant of Newtoun, kny^t, Aduocat to our fouerane lord.

PRELOCUTORIS in defence, The Laird of Keir, the Laird of Mufchett, the Laird of Pollok, Johnne Cranftoun, Mr Johnne Halyday, Aduocat, Mr Thomas Pollok, Aduocat.

THE Justice, with advyfe of my Lord of St Androis, my lordis Killythe, Clerk of Register, and his Maiefteis Aduocat, continewis this matter to the faxt day of December nixt, to be tryit at Edinburghe : And Ordanis the pannell to find Cautioun for thair entrie that day and place, in the hour of caus, vnder the panes following, viz : The faid Sir James Kneilland, vnder the pane of Ten Thowfeand merkis ; the faid Williame Maxwell, vnder the pane of Fyve Thowfeand merkis ; and the faid Robert Vrie, vnder the pane of Fyve Hundreth merkis money.

The perfonas on pannell offeris thame felffis to the Tryell of the Law for the faid cryme, difaffenting to the faid continewatioun ; and thairupoun askit instrumentis : And for obedience of the faid Justice Ordinance, the faid Sir James Kneilland ffind Sir Johnne Home of Huttonhall cautioner for him ; the faid Williame Maxwell ffind Sir Johnne Maxwell of Pollok, kny^t, cautioner for him ; and the faid Robert Vrie ffind Alexander Cocherane of that Ilk, cautioner for him, that thai fall compeir befor the Justice and his Deputis, in the Tolbuth of Edinburghe, the faid faxt day of December nixt, in the hour of caus, and vnderly the Law for the faidis crymes, vnder the feveral panes aboue writtin.

COMPEIRIT Harbert Maxwell, burges of Edinburghe, and producet ane Warrant of the Lordis of Secreit Counfell, anent the deserting of the dyet appointit for tryell this day.

JUSTICE, Justice-clerk, and your deputis : 3e fall, vpon the ficht heirof, desert the dyet appointit for Tryell of Sir James Kneilland of Monkland, Williame Maxwell of Cowglen, and Robert Vrie, burges of Paislay, the faxt day of December nixtocum, ffor the Refetting of vmq^{le} Mr Johnne Ogilvie, Jefuite : Anent the quhilk, thir presentis falbe your Warrant. Subferyuit AT ED^B, 3e xxij day of November, 1615. SANCTANDROIS. S^R J. MURRAY. ALEX^R HAY. S^R J. OLIPHANT. KILSYTH.

The pannell difaffentis to all forder continuatioun ; and proteftit, in refpect that this is the fecund dayet keipit be thame in this matter, firft at Glasgou, and now at Edinburgh, that their cautioneris be fred, viz., Sir Johnne Home of Huttonhall for the faid Sir James, and Alex^r Cocherane of that Ilk, for the faid Robert Vrie.

Hearing of Mass, &c.

Sep. 13.—MR JAMES MOFFET, alias HALYBURTOUN, ane Jefuite Preift. Dilaitit of the Trefsonable Hearing of Mafs within this cuntrie, fpeciallie within the place of Auchindown, a tuentie yeir fyne or thairby : And for con-

travening the Actis of Parliament in resoirting within this cuntrie, he being ane Jesuite and Seminarie Preift, directit from Rome, to peruert his Maiesteis subiectis from the trew Religioun; and vtheris crymes contenit in his DITTAY.

DITTAY against Mr James Moffet.

[The preamble is similar to those which precede, and founds upon the Act 29th July, 1587. It then states,]

“THAT 3e, being tranet vp at scholes and Colledges within this Kingdom, and haifing accomplischet your cours in the College of St Androis, quhair 3e was laureat; and haifing paireftir applyit your mynd to the studie of Theologie, and dyuerse tymes maid your privat exerceiss within pe New Colledge pair of, 3e, in your awin sulische opinioun, playing the rwnigait¹ frome the trew Religioun, first studeit and professit be 3ow within this Kingdome, adreffit your self to the place of Auchindoun, quhair 3e, aganis the saidis Actis of Parliament, hard ane Mefs, and was present at pe Celebratioun pair of, the Auld Laird of Auchindoun and Mr James Gordoun being present with 3ow, at the heiring of pe faymn: LYK AS, 3e, haifing schortlie paireftir past furth of this cuntrie to ROME, in Italie, and haifing pair reslaui the ordour of a Jesuite Preift, and haifing remanit furth of pis cuntrie be the space of tuentie yeiris togidder, studieing to pe said Roman Religioun, 3e being ane professit Jesuite, expres contrair the tennour of the foirsaid Act of Parliament, and in manifest contempt pair of, and of his Maiesteis royall authoritie, in the moneth of Julij, 1614, returnet to this realme, be directioun of CLAUDIUS AQUAVIVA, your Generall, off plane purpois and intentioun to pervert and seduce his Maiesteis subiectis frome the trew Religioun presentlie professit; resoirtit in dyuerse pairtis of this cuntrie, speciallie, within the burgh of Edinburghe, Cannongate, and Citie of St Androis, quhair 3e was tane, apprehendit, and brocht to this burgh of Edinburghe, and Tolbuth pair of, quhairin 3e haif bene detenit prissoner, as ane Jesuite Preift, and a perverter of pe Kingis Maiesteis subiectis from the trew Religioun, presentlie professit,” &c.

The pannell, efter reiding of the DITTAY and his accusatioun of the crymes mentionet thairintill, offerit him selff in his Maiesteis Will for the samyn: Quhairupoun my lord Aduocat askit instrumentis.—Thairefter my lord Aduocat producet the WARRAND following:—

JUSTICE, Justice-clerk, and your deputis: 3ow fall appoint a Justice Court to be haldin in the Tolbuth of Ed^r at suche convenient day as you think goode; and pairin you fall put Mr James Moffet, Preift, to the knowlege of ane Assyse for suche crymes as fall be gevin in Dittay againes him, be his Maiesteis Aduocat, and proceed and minister Justice vpon him, conforme to pe lawis of this realme; Bot yf the said Mr James fall happin to cum in his Maiesteis will, 3ow fall pronounce his Maiesteis will as followis, to wit: That the said Mr James fall be Banischet his Maiesteis dominiones, and nevir return agane within the samyn, vnder the pane of deid: And that he act him selff, judiciallie, to depairt and pas away betuix and suche a day as 3ow fall appoint, and nocht to returne vnder the said payne: And forder, that he find cautionn actit in the Buiks of Secret Counfall to this same effect, vnder the pane of Thre thowsand merkis, to be incurrit be his cautioner, besyde the pane of deid to be execute vpon him selff, in caice he failzie in the premisses. And this Dome being pronuncet, and he haveing actit him selff, that 3ow send him bak agane to his waird, quhill the said caution be fund, and quhill a schip be in reddlines quhairin he may be transpoirtit. Quhairanent pir presentis fall be your Warrand. AT EDINBUR^r, the xxij day of August, 1615.

AL. CANCELL^r. SANCTANDROIS. SCONE. BINNING. J. PRESTOUN. AL. DRUMMOND.

¹ Runagate; *renegado*.

SENTENCE was pronounced accordingly. He was adjudged to 'depairt and pas away furth of his Maiesteis dominiones, betuix and the tuentie day of October nixtocum, wind and wedder fervand.'

Slaughter.

Nov. 29.—JAMES KING, funtyme of Barro; Alexander Lummisdene of Clova; Mr Gilbert Arnould, indueller in Aberdene; and David King in Hoy, in Orknay.

Dilaitit, accuset, and persewit at the instance of Elizabeth Seatoun, only dochter to vmq^{le} Alexander Seatoun, than ffiar of Meldrum, Johnne Vrqubart of Craig-Fintrie, hir spous, for his intereis, Johnne Seatoun now of Meldrum, &c., off airt and pairt of the Slauchter of the said vmq^{le} Alexander Seatoun, with schottis of hagbuttis and muscattis; committit vpone the landis of Barro, in the hie-way betuix Meldrum and the Kirktown of Bourtie, vpone the xxvij day of August, 1590: And siclyk, ffor beiring and schuitting of Hagbuttis, muscattis, and pistolettis, &c.

Mr Robert Fairlie, feruitour to Mr Alex. King, Aduocat, produceit ane War-rand of his Maiestie, daitit at Newmarket, the sixtenth of November, 1615, anent deserting this dyet. The Diet was deserted accordingly.

Letters of Exemption

IN FAVOUR OF THE PROVOST, BAILIES, COUNCIL, AND COMMUNITY OF
The Burgh of Aberdeen.

Dec. 2.—Compeirit personallie Mr Thomas Nicolsone, Aduocat, in name of the Provost, &c. of Abirdene, and producet to my Lord Justice LETTERS OF EXEMPTION, vnder the Previe seill, quhairof the tennour followis.

JAMES, be the grace of God, King of Scottis: To all and findrie our schereffis, stewartis, Justice, Justice Clerkis, Thesaurer, Aduocat, and all vtheris Judges and ministeris of our Lawis, thair deputis and officeris, present and to cum, leigis, and subiectis, quhome it effeiris, to quhais knowlege thir our Letteris fall cum, Grating. Wit 3e ws, vnderstanding that the Provost, bailleis, counsell, and communitie of our burgh of ABERDENE, ar oft tymes atteichet and summondit to pas vpone Inqueistis and Assyis to our burgh of Edr and utheris pairtis outwith pair boundis and Jurisdictiones, in crymes committit far distant fra thame, quhairof thay ar altogidder ignorant; and that thay had ane Exemption to the effect vnderwrittin gevin and grantit to thame be ws, with advyfs of vmq^{le} our rycht trest coung James Erle of Moirtoun, Lord Dalkeith, &c. Regent to ws our realme and legis for the tyme; as the samym Exemption, of the dait at Aberdene, the thrid day of September, the 3eir of God Im^{Ve} threfcoir fourtene 3eiris, deulie and ordourlie past and admittit in the Justice Court baldin at our said burgh of Aberdene, immediatlie pairefter, be vmq^{le} Sir Johnne Bellenden, our Justice clerk for the tyme, at mair lenth beirs. AS ALSO, considering, how vpone the occasioun of Commissiones of Lennendries and Justiciareis, grantit in fauouris of the Noblemen of the cuntrie, or to vtheris, for administraitoun of Justice passing vpone our Rebellis, and disorderit persones for revenge of privat

quarrellis and contraverfeis betuix pairtie and pairtie; the faidis Proveift, bailleis, counfall, and communitie ar oft tymes drawin furth of pair awin Toun to vtheris pairtis of the cuntrie, to the grit hazard of pair lyves and wrak of pair guidis; albeit, that accoirding to the libertie of frie Burgh, quhair with thay and pair prediceffouris ar infeit and foundit, thay aucht only to attend vpone our selff, being in the ffeildis in proper perfone, or with our Leutenent, in defence of our realme aganis forane nationes. AND haifing confideratioun, that our faid Burgh of Aberdene lyis within the North pairts of our realme, far diftant fra ws, and of the guid, trew, and thankfull fervice done to ws and our prediceffouris be the Proveift, bailleis, counfall and communitie of our faid Burgh, alfweill in tyme of weir as of peace; and of pair reddie and deutiefull obedience towardis ws, quhairof we haif daylie pruiſ and experience, and refpecting pair guid mind to continew pairin hereftir: THAIRFOIR, we haif gevin and grantit, and be thir our Letteris gevis and grantis to the Proveift, bailzeis, counfall, communitie, burgefſis, craftifmen, and induelleris of our faid Burgh of Aberdene, preſent and to cum, ſpeciall LICENCE to remane and abyde at hame fra all Raidis, Conventionis, Oiftis, Affemblis, Airmeis, Gatherings, Wappon-fchawingis or Weiris, to be maid be ony our Juſtices, be Commiſſioun of Leutenendrie, Juſticiarie, or vther Commiſſioun quhatfumeuir, to be grantit be ws, or meiting of thame in ony pairt within our realme in tyme cuming, except pat aither our ſelff be preſent in proper perfone, or that our Leutenent, accompaneit with the remanent of our realme, be vpone the defence of the cuntrie, aganis forane nationes, or that our ſelff pas for repreſſing of Rebellis and Traitouris, aganis our perfone within the cuntrie: And fra all compeirance or paſſing vpone ony Affyſſis or Inqueſtis, in quhatfumeuir crymes or actiones, (except ſic crymes as ar committit within our faid burgh, friedome thair of, and tua myles about the ſamyn,) Exemis¹ and diſcharges thame and ilk ane of thame pairfra, during all the dayis of pair lyftymes. And willis and grantis pat pay in doing pairof ſhall incur na payne, ſkayth, cryme, nor danger in pair perfones, landis, or guidis, nor be callet nor accuſet pairfoir criminallie nor civille, be ony maner of way, in tyme cuming, nochtwithſtanding ony our Actis, ſtatutis, ordinances, Letteris, proclamatiounes, or charges quhatfumeuir, ſpeciall or generall, maid or to be maid in the contrair; anent the quhilkis, and all panes contenit pairintill, We haif diſpenſit, and be thir our Letteris diſpenſis with the Proveift, bailleis, counfall, communitie, burgefſes, craftifmen, and induelleris of our faid burgh, preſent and to cum, for euir. DISCHARGEING heirfoir, ſow, all and ſindrie our Schereffis, Stewartis, Juſtices, Juſtice clerkis, Theſaurer, Aduocat, and all vtheris Judges and miniſteris of our lawis, ſour Deputis and officeris, preſent and to cum, off all calling, accuſeing, atteiching, arreſting, ſummond-ing, wairning, poynding, trubilling, or ony wayis intrometting with the faidis Proveift, bailleis, counfall, communitie, burgefſis, craftifmen, and induelleris of our faid Burgh, preſent or to cum, pair landis or guidis, in ony wayis, in tyme cuming, for pair faid remaning and abyding at hame fra our faidis Raidis, Airmeis, and vtheris foirfaidis, and fra all and ſindrie Inqueſtis and Affyſſis, to be committit, as ſaid is; and of ſour offices in pat pairt, be thir our Letteris. GEVIN vnder our Previe Seill, At Dalkeithe, the ſaxtene day of Maij, the ſeir of God I^m. fflyve hundreth fourſcoir tuelff ſeiris, and of our regne the tuentie fflyve ſeir.

PER Signaturam manibus f. d. n. Regis ac Secretarij ſubſcriptam.

[*D. Will. Heart, Juſticiarius-deputatus;*

ASSESSORES Juſticiario, D. Alex. Drummond de Meidhoip, D. Will. Levingſtoun de Kilſythe,
Senatores Collegij Juſticie f. d. n. Regis.]

Barbarous Slaughter and Maiming of Sheep—Oppreſſion, &c.

[THE following Caſe is altogether unparalleled, even in the annals of Border or Highland revenge. On account of its ſingularity, it has been conſidered neceſſary to make ſome investigation into the

¹ Exempts.

subject, for the information of the curious enquirer. The story is so forcibly told in the proceedings before the Criminal Court, that the Editor shall not weaken its effect by attempting to rehearse the facts in this place. It is enough for the purposes of this Collection, that the reader is informed, that the property of *Howpaslot*, an esate of one of the most ancient branches of the name of *Scott*, having, by some means, come into the temporary possession¹ of *Sir James Douglas of Drumlanrig*, a powerful Border Baron, who had distinguished himself by the activity with which he aided the suppression of the disturbances on the Marches, *the Lady Howpaslot* appears to have been roused into fury at the very idea of the domains of her ancestors coming into the hands of a Douglas. She therefore instantly held a council of war in the *Town of Hawick*, of which *Drumlanrig* was the Superior, in the month of April, 1615, at which she and her friend, *Jean Scott of Satchells*, presided. The bravos and ruffians who figure in this Trial, and of whom every Clan had a few to do their worst work, at once undertook to execute the orders of these infuriated females, and, as will be seen by the subsequent proceedings, they succeeded in effectually preventing *Drumlanrig* from ‘pleniffing,’ or stocking, the farms. These villains greedily engaged to maim and destroy the whole of the sheep which had been brought to the grounds; and this cruel and barbarous act they performed in a manner almost too horrible to be related.

Sir James Douglas did not long survive the perpetration of this atrocious fact, having died Oct. 16, 1615. He was succeeded by his son *Sir William*, who was afterwards created *Viscount of Drumlanrig*, *Lord Douglas* of Hawick and Tibbers, Apr. 1, 1628; and *Earl of Queensberry*, Jun. 13, 1633. *Sir William* actively pursued these heartless ruffians, and was successful in bringing all of them to deserved punishment. In the Appendix to this Trial, the reader will find a characteristic Letter from this Nobleman to his kinsman, *Murray of Lochmaben*, the Original of which the Editor has fortunately discovered in the Advocates’ Library.

In an interesting communication from *SIR WALTER SCOTT*, Bart., on the subject of this Trial, with which the Editor has been favoured, some interesting particulars are detailed, regarding THE SCOTTS of the Border. No apology need be made for enriching these pages with the following extract:—

‘OUR Name were very clannish. I have, for the time, in my possession, a BAND or ASSOCIATION between *Sir Walter Scott of Branholm, knight, Laird of Buccleuch*, and about fifty of the most important men of his kin and Clan, [dated 3d June, 1589.] It proceeds upon an Association made to the same purpose by *SIR WALTER SCOTT*, the father of the Chief, and is calculated to secure against any Clansman taking any “room” or possession over the head of another of the Name. Any one who was accused of having done so, bound himself to stand by the award of five men, to be mutually chosen, bearing the Name of Scott. Even if the Chief should encroach upon the possessions of any inferior person of the Name, he declares he will submit the cause, in like manner, to four persons of the Name of Scott; which shows an independence on the part of the Clansmen which I was not prepared for. The BAND is the property of my cousin and relative, *William Scott, Esquire, of Raeburn*. It seems to have been calculated to prevent kinsmen from going to law with each other, and to secure a species of justice within the Clan, to the advancement of the “guid and godlie purposes” of their Chief. The “guid and godlie purpofe” of *the Cordiner* and *the Suckler* seems to have been intended for the same reason. *HOWPASLOT* was an old inheritance of *the Scotts*, and, on whatever grounds Douglas possessed it, returned to the Name again. *Douglas*, you are aware, was *Lord of Hawick*, to which *Buccleuch* afterwards succeeded.

‘Of the people mentioned in the Trial, I know little. *Satchells* is probably the place of the name, lying on the *Ale* or *Teviot*, now part of *John Corse Scott of Synton’s* property. The individual termed

¹ It is by no means unlikely that *Howpaslot* was ‘conquest’ by means of Wadset, Apprising, or other legal ‘Diligence;’ for it is certain, that it was but a short period in the occupation of *the Laird of Drumlanrig* or his Tenants. The summary mode by which his ‘*guidis*’ were disposed of, may have precipitated his bringing these matters to a close, and his accepting of a pecuniary accommodation.

William Scott, called in Satchells, may have been the father of *Walter Scott of Satchells*, the Historian of the Clan, terming himself,

An old Souldier, and no Scholler,
And one that can write nane,
But just the letters of his name.'

The singular work here quoted by SIR WALTER SCOTT, a copy of which is in the Editor's Collection, is titled, 'A TRUE HISTORY of several honourable FAMILIES of the right honourable NAME OF SCOT in the Shires of Roxburgh and Selkirk, and others adjacent. Gathered out of Ancient Chronicles, Histories, and Traditions of our Fathers, by *Capt. Walter Scot*. EDINBURGH, printed by the Heir of *Andrew Anderson*, Printer to his most sacred *Majesty*, City, and Colledge, 1688.' It was composed by the author at the very advanced age of *Eighty-eight*! He states that he was fifty-seven years in active service, abroad and in Scotland, having entered the army at the age of twenty-nine. Although he boasts of being illiterate, he seems to have had much of the spirit of a staunch Member of the *Roxburghe, Bannatyne, or Maitland Clubs*—for he concludes his extraordinary work with the following '*L'Envoye*.'

'Therefore be gone my Book, stretch forth thy VVings and fly
Amongst the Nobles and Gentility:
Thou'rt not to fell to Scavengers and Clowns,
But given to worthy persons of Renown!
The Number's few I've printed, in regard
My Charges have been great, and I hope Reward;
I cauf'd not print many above twelve-score,
And the Printers are engaged that they shall print no more!'

The Editor, thinking that the Original CONTRACT or BAND OF ASSOCIATION between the heads of the powerful FAMILIES of the NAMES of KER and SCOTT, will prove most acceptable, as preserving the memory of times so powerfully depicted by *Sir Walter Scott* in many of his works, he has, after examining the ancient Records, procured a transcript, which is also appended to the present Trial. So able an abstract of the renewal of this '*Band*' has been given by *Sir Walter Scott*, that it has not been deemed necessary to apply for liberty to present the reader with a copy of it.]

Feb. 20, 1616.—GEORGE SCOTT, cordiner in Hawik, '*the Souter*,' callit *Mariones Geordie*; Walter Scott, sone to *Braidis Andro*; Ingrem Scott, and Jok Scott, callit *the Suckler*.

Dilaitit of the crewall and barbarus Slauchter of threfcoir fcheip, or thairby, pertaining to the Laird of Drumlangrig; committit vpon the Landis of Howpallot, in the moneth of Apryle last, conform to the Dittay following.

DITTAY *against George, Walter, Ingram, and Jok Scot, alias the Suckler*.

FORSAMEKILL AS, albeit be dyuerse loveabill lawis and Actis of Parliament, it be expresse provydit, flatute, and ordanit, that all Slayers of Horffis, oxin, or vther cattell and guidis,¹ fall be estemit and pwneist as Thevis; as the saidis Lawis and Actis of Parliament in tham selfis proportis: Nochtwithstanding quhairof, it is of verritie, that sic is the perversè dispositioun of dyuerse persones, quha, preferring pair awin privat grudge, and revenge arryving pairupoun, to

¹ Stock; sheep.

the dew reuerance and obedience of his Maiesteis authoritie and lawis, ceiffis nocht to profecute and follow furthe all godles and indirect meanis to effectuat pair malice, be sic monstuous and vnhard of crewaltie, as the lyk quhair of hes nocht bene hard amangift the *wyld Irish* and savadge people, let be within any reformat and ciuile pairt of his Maiesteis dominionis : And namelie, the persones perticulerlie aboue writtin, be the instigatioun, na dout, of sun persones of gritter qualitie and conditioun nor thame selffis, vpon consideration, that þe landis and leving of *Howpaslet* war deulie and lawfullie conqueist and acquyret be vmq^{le} SIR JAMES DOUGLAS of *Drumlangrig*, *knycht*, and he pairby setlet in possession pair of, be pleniffing of the samyn with his bestiall and guidis ; thay and vtheris of pair unhappie socieatie, altogidder disflaneing that þe said *Laird of Drumlangrig* sould inioy or possesse ony landis or possessiones within that pairt of this kingdome ; and pairfoir, plotting and devysing all godles and vnlauchfull meanis how to interupt his peceable possession of the saidis Landis, and to lay the samyn waift, and pairby to mak thame vuproffitable to him and his posteritie—in the moneth of Apryle lastbypast, the saidis *George Scott*, *Walter Scott*, *Ingreu Scott*, and *Jok Scott*, callit the *Suckler*, haifing assemblit and convocat to thame selffis *Williame Scott*, callit in *Satchellis*, and vtheris, pair complices, first keipit ane generall meitting within þe *Toun of Hawik*, quhair, in pair devillische counfell, it was concludit and aggreit vnto amangis thame, that, within a fyve or sex dayis pairefter, they sould all meit togidder, vnder nycht, vpon the saidis landis of *Howpaslet*, and pair to slay and distroy the said *Laird of Drumlangrigis* haill bestiall and guidis being pairupoun : LYK AS, accoirding to the foirsaid damnable conclusioun, the said *George Scott*, accompaneit with the said *Williame Scott*, callit of *Satscheillis*, vpon the . . . day of þe said moneth of Apryle lastbypast, come, vnder silence and clud of nycht, fra the said *Toun of Hawik*, to *Eilrig-burne-fute*, and the said *Williame Scott* being than mussellit ;¹ at the quhilk place, the said *Jok Scott*, callit the *Suckler*, met with thame ; and pairfra, thay thre past vp the watter, be the space of thre quarteris of ane myle, to ane Cleuch,² callit *Birny-cleuche*, betuix *Eilrig* and *Howpaslet* ; quhair, accoirding to þe former appointment, the saidis *Wattie* and *Ingreu Scottis* met with thame : fra the quhilk place thay foure, accompaneit with the said *Williame Scott*, callit of *Satschellis*, come to the saidis landis of *Howpaslet* ; and pair, being bodin³ with suordis, bandit stalffis, and vtheris wappones, provydit be thame for þe purpois, in ane Cleuch-lyde, quhair þe said *Laird of Drumlangrig* his scheip war lying in pair lairis,⁴ maist barbaruslie and inhumanelie, as savadge and crewall beistis, destitute of naturale

¹ Disguised ; *muffled*. Old Fr. *emmuselé*.
hollow between precipitous banks, &c.

² A rocky ascent, or cliff. It also signifies a cleft or

³ Furnished.

⁴ Beds ; folds.

reasone, with pair drawin fuordis and vtheris wappones foirfaidis, ran throw þe haill flok of scheip, flew, lamet, and menzet¹ to the number of threfcoir of the said scheip, quhairof fouretie or pairby war flane, be streking of² pair heidis, and cutting thame in tua throw pair bakis; and the rest of thame, pair spaldis³ and legis wer strukin away fra thame in maist barbarous maner, and war sa left spreuleing in pair deid-thrawis⁴ vpone the grund of the saidis landis; committing pairthrow maist haynous and vnihard of Crewaltie and Oppressioun: And the saidis persones aboue complenit vpone, and ilk ane of thame, ar airt and pairt of the saidis crewall, monstrouous, and vnihard of crymes: ffor the quhilk, thay aucht and sould be pwneist be ane exemplarie pwneischment, to the terroure and example of vtheris to commit the lyk heireftir.

THE VERITIE of pair giltines of the quilkis haynous crymes is cleirlye provin, be the TAIKINIS⁵ following, viz. 1. BE the Deposition maid be þe said *Jok Scott*, callit *the Suckler*, quha was send for be THE LADY HOWPASLET to cum to þe *Toun of Hawik*; and at his cuning, haifing met with þe LADY, and with *Jeane Scott*, callit of *Satschellis*, and with þe said *George Scott*, callit *Mariones Geordie*, at þe *Croce of Hawik*, it was pair concludit amangis thame, that *the Laird of Drumlangrigis* scheip sould be all flane: AND for that effect, accoirding to þe appointment than maid, a thre dayis paireftir, *Jok the Suckler* come to *Eilrig-burne-fute*, quhair, in the glomeing,⁶ he mett with the said *Mariones Geordie*, and with *Williame Scott*, callit in *Satschellis*, quha was with þame in companie; quhilk *Williame Scott* was than mussellit. Lyk as, at þe said *George Scottis* desyre, the said *Jok the Suckler* past with sow and the said *Willie Scott* vp the watter, the space of thre quarteris of ane myle, to ane cleuch callit *Birnie-cleuche*, betuix *Eilrig* and *Howpaslett*, quhair þe said *Wattie Scott* and *Ingrem Scott* met with thame, the said *Wattie* and *Ingrem* haifing plaidis and blew bonnettis: ffor the quhilk place thay past togidder to *the lands of Howpaslett*, quhair the said *Laird of Drumlangrigis* scheip lay, and pair flew þame, in maner speicfeit in þe Dittay and þe said *Jok the Suckleris* Deposition.—2. To the taikin lykwayis, the said *George Scott* persaveing þat *the Suckler* wald nocht pas forwardis to the committing of the fact, he pairfoir drew his fuord, and pairwith thraitnet *the Suckler*, that gif he past nocht with him and thair complices to þe deid, he sould hew *the Suckler* pairwith in peces.—3. LYK AS, in regaird of the former Deposition sa maid be *the Suckler*, the said *George Scott* being presentit befoir my *Lord Justice Clerk*, my *Lord Aduocat*, and my *Lord Justice*, and examinat pairupoun; the said *George* was content to tak the giltines of þe said cryme vpon him, gif *the Suckler* wald affirme the veritie pairof, in his face:

¹ Maimed.
death.

² Off.

³ Shoulders. O. Fr. *espaule*.

⁵ Tokens; proofs.

⁶ Twilight; after sunset.

⁴ Struggling in the agonies of

Lyk as, the said *George* and *the Suckler*, being confrontit, he ratifeit and renewit his former Deposition and haill circumstances pair of in the said *George* face; and offerit to haif fochin pe Singular Combat with the said *George*, vpon the verritie pair of.—4. To the taikin lykwayis, pe said *George*, haifing ane dog named *Hyde-the-bastard*, he being convenit at dyuerse tymes with his companieonis, brak out in thir woirdis, saying, ‘ Sa lang as I and my Bastard brother levis (meaning be his dog), *Howpaslet* fall nocht plenische.’¹—5. To the taikin also, eftir pe slauchter of the said schein, the said *George* being suspectit pair of, and vrget be *James Douglas* to geve ane test,² quhair he was pat nycht of pe barbarous slaying of thame; becaus he could nocht geve pe said test and cleir him self pair of, he querrellit the said *James Douglas* pairupoun, within the *Towne of Hawik*, and presentit ane bendit³ pistolet to him, of purpois to haif slane him pairwith; quhilk he wuld half schote, gif he had nocht bene stayit be *James Weymes*, *Johnne Scott* callit *Bony Jony*,⁴ and *James Lechen*, quha tuik pe pistolett frome him.—6. To the taikin lyk wayis, the said *George*, being examinat in pe premisses be pe saidis Lordis Examinatouris, vpon the xxviij of December last, and being demandit, quhair he was the tyme of the keiping of the Justice Court of Jedburgh? Declairit, that he come the day of the halding of the said Justice Court to the Toun of Jedburgh, quhilk was vpon ane Thurisday; and vpon the Tyfsday and Wedinsday of befor, was also in Jedburgh, in maner specifeit in his Deposition: Lyk as, the said *George* being removet for a tyme, and of new re-examinat, he was contrair to his former Deposition, declairing, pat vpon the Sondag, Monondag, Tyfsday, and Wedinsday befor the Court, and vpon the Thurisday, the day of halding pair of, he was within the *Town of Hawik*, accompaneit with the persones set down in his posterioir Depositione.—7. To the taikin also, the said *Walter Scott*, at his cuming with *Jok the Suckler* to *Birniecleuche*, the said *Jok the Suckler*, haifing refusit to pas forwardis with him to pe slaying of pe said schein, the said *Walter*, nochtwithstanding his refuseall, earnestlie delt with him to cum fordwardis, saying to him, ‘ JOK, thow art als giltie alreddie as thow canst be, cum fordwardis pairfoir with ws to the deid; and paireftir, thou fall gang with us *Northe*, quhair we will be weill trett and interteneit; for we haif ane place prepairit for our reslett.’⁵—8. To the taikin lyk wayis, the saidis *Walter* and *Ingreem Scottis*, the tyme of pair lait apprehending in pe *Northe*, being inquiryet, gif ony of thame knew *Jok the Suckler*? Thay denyit to pair takeris⁶ that evir thay knew him: Bot being brocht to waird to pe *Tolbuth of Edr*, quhair pe said *Jok* being presentit to

¹ Shall not be stocked.² Proof or testimonial.³ Cocked.⁴ *Bonny*, or handsome,

Johnnie.

⁵ Reception and concealment.⁶ Examinators.

thame, thay nocht only knew, bot be his name askit him faying, ‘ Quhat now, *Jok!* How come thow heir—and quhairfoir ar thow wairdit¹ in this hous?’ SA that be þe taikinis aboue written, þe faidis perfonis giltines of the faid fact is cleirlye provin.

PERSEWARIS, Williame Douglas of Drumlangrig, Sir Williame Oliphant of Newtoun, kny^t, Aduocat.

PRELOCUTOURIS in defence of George, Wattie, and Ingrem, allenarlye,

Mr Thomas Nicolfoun, Laurence Scott, Adame Cunninghame, Aduocattis.

Efter reiding of the DITTAY fet down in the fummondis, at command of my Lord Justice and Affeffouris, it is declairit be Mr Thomas Nicolfoun, as prelocutour for George, Walter, and Ingrem Scottis, that he acknowlegis the cryme fet down in the Dittay to be haynous and worthie of condigne puneifchment; bot as to the Dittay it felff (nocht granting the cryme thairin mentionet to be of veritie) againis the pannell, alledgis the famyn is nawayis relevant to pas to the knowlege of ane Affyse; nather can the committing of the fact lybellit infer daithe, becaus the grund and fundatioun thairof is vpone tua Actis of Parliament, the first quhairof is the 100 Act of his Maiesteis sevint Parliament, haldin in October 1581, quhilk is only extendit agains the flayeris and hocheris² of horffis, oxin, and vther cattell, the tyme of laubouring the grund; and the vther Act is the 82 Act of his hienes ellevint Parliament, haldin vpone the xxix of July 1587, quhilk is only ane Ratificatioun of the first: Bot the Dittay beiris only the Slauchter and Hocheing of fcheip, quhilk is nawayis expreffit nor prohibeit be the faidis Actis: And, thairfoir, the Dittay and Actis of Parliament being difconforme, the famyn can nawayis pas to ane Affyse; fpeciallie, in respect na penall Statute may be forder extendit nor³ the famyn is fet down *per expreffum*: quhilkis Actis he defyret to be red.

It is anfuerit be my Lord Aduocat, that the mynd and intentioun of the lawis, and making thairof, man⁴ be advertit vnto, quhilk is the puneifchment of all haynous and deteftable crymes, committit be quhatfumeuir way and be quhatfumeuir perfone: flor, als it is eftemit ane haynous cryme, be the faidis Lawis, to hoche ane ox or ane horfe, fa the cryme is far moir haynous to flay and cut af ane haill flok of four or fyve fcoir fcheip, and thairby to displenifche and lay waift ane gentilmannis poffeffioun and rowme; quhilk the haill lawis and Actis of Parliament, vnder the name of ‘ vther cattell,’ exprefflie forbidis, and concludis puneifchment agains the committeris: In respect quhairof, the Dittay is maift relevant to pas to ane Affyse, nochtwithftanding of the allegiance aboue writtin.

THE JUSTICE Repellis the allegiance; and ffindis the Dittay relevant to pas to the knowlege of ane Affyse. Quhairupone the Aduocat askit Instrumentis.

¹ Imprisoned.

² Hamstringers.

³ Than.

⁴ Must.

ASSISA.

Thomas Wauche of Schawis,
 Johnne Coluile in Preiftoun,
 Gilbert Greirfoun of Beochane,
 George Lyell in Spachhouffis,
 Malcolme Dalrumpill of Wat-
 terfyde,

Robert Hunter in Halywoid,
 Rodger Padzeane of Newtoun,
 Thomas Greirfoun of Barjarge,
 Archibald Menzeis in Enoche,
 Patrik Hair in Glenquhirrie,
 Rob. Phillope, burges of Dumfreis,

Adame Trumble in Lyntlawis,
 Peter Broun in Durisdeir,
 Johnne Mcmorrane of Glasfene,
 James Willamesone in Craufurd-
 toune.

OBJECTIONS *against certain Assisors passing upon the Inquest.*

It is allegit aganis *Thomas Wauche*, that he can nocht be reffaut vpone this Assyse, becaus he duellis nocht within the foure-halfis-about. Anfueris, aucht to be repellit, in respect he duellis within the Kingdome of Scotland, and he is summond to pas vpone the tryall of ane haynous cryme.—The Justice admittis him vpone the Assyse.

It is allegit aganis *Johnne Coluile*, that he can nocht pas vpone this Assyse, becaus he is tennent to *my Lord of Angus*, quha is cum to Ed^r at the desyre of the *Laird of Drumlangrig* to assit this persute. Anfueris, aucht to be repellit, in respect the Erle of Angus nocht present, nather as persewer or defender.—‘Admittis.’

It is allegit aganis *Gilbert Greirfoun*, that he can nocht be admittit, becaus he is tennent to the *Laird of Lag*, quha is present at the bar, assisting the *Laird of Drumlangrig* in this persute. Anfueris, aucht to be repellit, in respect he is ane sewar and na removeable tennent.—The Justice, vpone the geving of *Gilbert Greirfounes* ayth, that he is ane fsewar, and that he gaif na partiall counsell, in preiudice of the pannell, admittis him vpone this Assyse.

It is allegit aganis *Robert Phillope*, that he can nocht pas vpone this Assyse, becaus he is the *Laird of Drumlangrigis* pensioner.—The Justice, in respect of *Robert Phillipis* ayth, gevin be him, that he is nocht *Drumlangrigis* pensioner, and that he hes na guid deid of him, bot as ane vther gentilman of the cuntrie respectis and honouris him, Reffaues him vpoun the Assyse.

It was, eftir his admissioun and reffaueing, allegit be *Laurence Scott*, in name of the pannell, that *Robert Phillope* can nocht pas vpone this Assyse, becaus he is Bailzie Clerk to the *Laird of Drumlangrigis* Regalitie. Anfueris, he can nocht be declynet nor put af the Assyse, eftir his ayth tane, and purgatioun of partiall counfall; speciallie, feing it is vpone tryell of ane cryme, quhilk is *factum obsecrum et clandestinum*.—The Justice ordanis him to remane ane Assyfour.

THAIREFTIR, [the Dittay being of new red, in presens and audience of the Assyse, with the Taikynes producet be the persewer for verificatioun thair of, it is allegit be Mr *Thomas Nicolfone*, in name of *George Scott, Walter* and *Ingrem Scottis*, that the Taikynnis producet and red for cleiring of the Dittay, sould nawayis be respectit be the persones of Inqueist, nather ar the saidis Taikynnis concluding argumentis to verifie the Dittay. And *ffirst*, the Depositiones maid be *Jok Scott*, callit the *Suckler*, sould nawayis be respectit, becaus he being apprehendit for the samyn fact, and haifing confessit him selff to be *socius eiusdem criminis*, his Deposition can nocht work aganis ony honest man quha is innocent; and thairfoir sould nocht be respectit. *Secundo*, as to the Taikin foundit vpone *George Scottis* dog, albeit the samyn be na grund to infer the Slauchter of the fcheip lybellit, 3it he denyis it. *Tertio*, the Taikin for slaying and querrelling of *James Douglas* inferris nathing; becaus he was nocht bund to confels or schaw him any test quhair he was the nycht of the slaying of the

fcheip ; and as to the Taikin it felf, denyis the famyn. *Quarto*, concerning his Depofitioun maid be him, quhair he was the tyme of the Juftice Court of Jedburgh ; the famyn inferris nathing for probatioun of the Dittay ; And as to his contrair Depofitioun, that he was in Hawik, it can nawayis infer him to be culpable of the cryme. And allegis, that the haill former Taikynnis previs na thing aganis *Walter* and *Ingrem Scottis*. *Item*, the laft taikin anent *Walter* and *Ingrem*, that thay war tryet the tyme of thair taking, gif thai knew *Jok the Suckler* ; thair granting or nocht granting thairof can nawayis infer thame to be giltie of the fact.

THE *Laird of Drumlanerig*, being fuorne, and his aithe tane thairof, gif¹ he hes juft caufe to perfew the pannell for the crymes contenit in the Dittay, as giltie and culpable thairof ? Declairit, that this Dittay is fuorne to him to be of veritie, be honeft and credible men, viz. that *George*, *Walter*, and *Ingrem* war thre of thame that was at the flaughter of his fcheip, in maner fpecifeit in the Dittay : And thairfoir, be his ayth, declairit that he hes juft caus to perfew thame, as doaris of fic ane odious fact. And as to *Jok Scott*, callit *the Suckler*, he hes alfo hard of his meitting and keiping tryftis with thame in that matter ; bot, in refpect he is nocht certanelie informet that he was at the doing of the deid, he can nocht perfew him as ane principall committer : And finallie, declairit, that gif he war nocht perfuaidit, in his confcience, that the faidis *George*, *Wattie*, and *Ingrem Scottis* war the fpecial flayeris of the fcheip, (be quhais directioun the famyn was done, remittis that to thame felffis,) he wald nocht haif followit thame thairfoir.—Quhairvpone my lord Aduocat askit instrumentis.

My Lord Aduocat, for preving of the Dittay, repeittis the *Laird of Drumlanrigis* ayth and Declaratioun : Producet the Depofitiones of *Jok Scott*, callit *the Sukler* ; and repeittis his ratificatioun thairof in judgement, and constant affirmatioun of the veritie thairof in the vtheris thre faces :² And lykwayis, repeitis the Actis of Parliament red, quhairvpone the Dittay is foundit : And defyres the Affyfe to confidder the haynoufnes of the cryme ; and Proteftis for Wilfull Error aganis thame, gif thay Acquit the pannell thairof.

VERDICT. The Affyfe, all in ane voce, be the mouthe of the faid Thomas Wauche of Schawis, chancellor, ffland, pronuncet, and declairit the faidis *George Scott*, *Walter Scott*, and *Ingrem Scott*, to be ffylet, culpable, and convict of the actual flaying of the faid *Laird of Drumlanrigis* fcheip, in maner fpecifeit in the Dittay : AND flielyk, ffland, pronuncet, and declairit the faid *Jok Scott*, callit *the Sucler*, to be Culpable, ffylet, and convict of being vpone the counfell and foirknawlege of the fact aboue writtin, and in keiping of dyuerfe tryftis and meattingis with the vther thre, conforme to his awin Depofitioun : And Clengis

¹ If.² When confronted with them,

him of the actuall deid, be fleing away fra the doing thair of, befor it was committit.

SENTENCE. The Justice, be the mouth of Johnne Dow, dempster of Court, Decernit and Ordanit the saidis *George Scott*, *Walter Scott*, and *Ingreim Scott*, to be tane to the Mercat-croce of Edinburgh, and thair to be hangit vpone ane gibbet, quhill thay be deid: And all thair moveabill guidis and geir to be escheit and inbrocht to his Maiesteis vse, as culpable and convict of the crymes aboue specifeit. AND lykwayis, Ordanit the said *Jok Scott*, callit *the Suckler*, to be tane bak to waird, thair to remane vnto the tyme he (the Justice) be advyset with the Lordis of Secreit Counfall, anent his dome.¹

APPENDIX ILLUSTRATIVE OF THE PRECEDING TRIAL.

I. LETTER, *the Laird of Drumlanrig to Murray of Lochmaben.*²

RICHT WORTHIE AND LOWING BROTHER,

SE remember, in on of my former Letteres, I schew ȝow, pat I had gotin sum tryall³ of that uyld and barbarous uillanie quhilk was comitit, in ȝe slaying of my scheip, quhen I was last at Court; quhairin I did than write ȝe more spairinglye, being lothe (in respect of ȝowr griter affaires) to trubill ȝow with it, till I had brocht it till sum further cleirnes; quhilk now I have done, and hes tuo fallowis presentlie in hand pat war actoris in it; ȝe on callit *Jok Scott the Sukler*, quho hes confessit ȝe simpell treuth, in all poyntis, both of his auin pairte, and ȝe rest pat war with him at pat filthie actionn; to wit, *Geordie Scott the Soutor*, callit *Mariounes Geordie*, *Watt Scott*, callit *Braidis Wattie*, *Willie Scott*, callit of *Satchelis*, and *Ingrum Scott*. This *Succler*, in his Confessioun, he condiscendis cleirleie both vpoun ȝe tyme, place, and forme of thair meiting and pairting, with all wther takinis and circumstances pat pass amongst thame, quhen they war togidder (as his Depositionn beiris.) Nochtwithstanding this vther, callit *Geordie Scott the Souter*, (quhom I have also in handis,) standis ȝit to his denyall, altho they be many grit presumptionis of his guiltines; aluayis⁴ *the Suckler*, being fundry tymes examinat and confrontit with him befor THE LORDIS OF COUNSALL, he abydis constantly at everye poynt of his first Confessioun; and offeris, nocht only to fecht *the Souter* on it, bot all ȝe rest, everie on of thame efter another, quhensoever they can be had, gif it will pleis HIS MA^{TIE} and THE COUNSALL to suffer him. The vther thrie ar fugitiues for that and vther crymes of Thift and Slauchter; and, as I wnderstand, ar all out of the countray, sum in *Irland*, and sum ellis quhair; vtherwayis, befor this tyme, I think I had fund meanis to haue gotin thame in handis, (ȝit according till our auld Scottis proverb, 'Ane ȝule feist may be quat at Pafe!' Quhen perhapis they may imagin it be forgot.) In the meintyme, let me intreit ȝow, pat ȝe will do me that fauowr to motioun this maiter to HIS MA^{TIE}, quhairby I may have it, by his Letter, recommended to ȝe Counfall, nocht only for ȝe exact tryall and punischment thair of to ȝe daithe, for ȝe wrang that is alredie done, bot also to terrifie all other malefactoris from attempting ȝe lyk heirefter; quhilk, I protest to God, I ponder more in respect of ȝe preparatiue and consequens pat may follow thairvpoun to ȝe preiudice of ȝe comonweill of ȝe countray, in cais it be lichtlie passit over vnpunischit, than for any particular of my awin. Now, gif ȝe find it expedient, it war nocht amis, seing the *Shanfler*⁵ and *Secretar*⁶ (quha knawis ȝe

¹ It is likely that the Suckler had been promised his life, when he turned informer; but being a most dangerous character to turn loose on society, the public prosecutor appears to have been instructed by the Council to rake up a few of his former misdeeds, and have him cleverly put out of the way. See the following Case, Jun. 21, 1616.

² From the Original, preserved among the *Denmylne MSS.* Adv. Library. ³ Proof; evidence. ⁴ Nevertheless.

⁵ The Lord Chancellor, Alexander Earl of Dunfermline.

⁶ Thomas Earl of Haddington.

haill estate and progrefs of this buffines) ar to be with HIS MATIE at Court, that 3e fould haue thame neir-hand by, quhen 3e propoun it to HIS MATIE at Court, in cais he hapin to defyre thair opinioun in it. And this, I wald befeik 3ow to do with all pe conuenient haift 3ow can, pat I may have 3owr anfuwer with HIS MATIES Letter befor pe feuinth or aucht of pe nixt month, becaus I do intend, God willing, at pat tyme, to have thir tuo fallowis, at leift on of thame, put to the tryall of ane Affyse; at quhilk tyme (if nocht befor thane) I do affuir my self pat God fall mowe pe hart of him quho standis most obstinatlie to his denyall, euin to confefs the treuth, as pe other hes done: albeit thair be sum buffie-headit men heir, quhom I will nocht name at this tyme, pat wald wis pe contrair; and ar deiling, be all meanis possibill, so far as in thame lyis, to pat effect; bot be pe grace of God, and HIS MATIE fauowr, with 3owr help, I howp to disapoynt pame. As for the rest of my particularis, I trust 3ow will nocht be forgetfull of thame; and when 3ow find 3owr auin tyme, will let me knaw, pat I may luik for in pame. So I haue no more to say, bot alwayis efter on¹ I reft,

3owris in quhat I can to serue 3ow,

EDINBURG, the vi day of
Januar, 1616.

DRUMLANGRIG.

3ow will do me pe fauowr to present my humbill seruice to 3owr lady.

To his muche honoured and worthie broper JOHN MURRAY of Lochmaben, Grume of his Ma. Bed-chamber, Thes.

II. "CONTRACT BETUUX THE SCOTTIS AND THE KERRIS."

(It has already been noticed, in the Introduction to the present Trial, that the Editor has been fortunate enough to discover the Original BAND or CONTRACT referred to by *Sir Walter Scott*, preserved in Record of Deeds,² Mar. 23, 1564. This remarkable and interesting document is preceded by a solemn entry in the Register, in these words. "In presens of the Lordis of Counsale, compeirit (SIR) WALTER SCOTT of Branzholme, with his Curatouris vnderwrittin, personalie, except ane nobill and mychté lord, *James Duke of Chatteaulrault*, quha compeirit be *Maister David Borthuik*, his procuratt, one that ane pairt; and SIR WALTER KER of Cesfurde, kny^t, for him self, and takand the burding vpoune him for his barnis, and the remanent of his kynd frendis, specifeit and contentit in the Contract vnderwrittin, personalé, on that vther pairt; and gair in the samyn, subscriuit with thair handis, as followis; and desirit the samyn to be insert in the Bukis of Counsale, and to haue the strenth of ane Act and Decreit of the Lordis thairof, and thai to interpone thair auctoritie to the samyn," &c.

It is only necessary, farther, to refer the reader to the valuable annotations of *Sir Walter Scott*, appended to 'The Lay of the Last Minstrel,' for a perfect knowledge of the deadly Feuds which had so long raged between two of the greatest Border Families, the SCOTTS and KERRS, to 'staunch' which was the professed object of the present BAND.)

AT EDINBURGHE, pe xxij day of Marche, the 3eir of God Im.Vc.lxiiij 3eiris. It is appointit, aggreit, and fualé concordit, betuix rycht honorabill menne, SIR WALTER KER OF CESFURDE, KNY^t,³ for him self, and takand pe burding vpoune him for his barnis,⁴ and for his bruder *Mark Commendatér of Newbottle*, and his barnis; *Johnne Hume of Coldenknowis*, and his bairnis; *Andro Ker of Fawdounsyde*, his bairnis and breder;⁵ *Thomas Ker of Marfingtoun*, his fader-bruder,⁶ and pair bairnis; *George Ker of Lyntoune*, his bairnis, his ois,⁷ and bruder-bairnis;⁸ *Richard Ker of Gaitfchaw*, his bairnis and breder; *Andro, Williame*, and *Johnne Kerris*, brether to *Sir Thomas Ker of Pharynhirf*, kny^t; *Mark Ker of Kippefchaw*, and his sone *Robert Ker* of Bothtowr; *Robert Ker* elder, burges of Edinburgh; and all vperis pair barnis, brether, kynne, freindis, menne, tenentis and servandis, except pe freindis vnder specifeit, nocht comprehendit vnder pis appoyntment, one pat ane pairt; AND WALTER SCOTT OF BRANXHOLME AND BUKCLEUCH,⁹ with consent and assent of ane rycht michté

¹ Always after one; steady; unchangeable. ² General Register House, Vol. VII. fol. 131. ³ Ancestor of the Ducal Family of *Roxburghe*. He married *Isabel*, daughter of *Sir Andrew Kerr of Fernihirst*. ⁴ Children. ⁵ Brothers. ⁶ Uncle. ⁷ Grandchildren. ⁸ Nephews and Nieces. ⁹ He married *Lady Margaret Douglas*, eldest daughter of *David*, seventh *Earl of Angus*, niece of the Regent Morton. This great man died Apr. 17, 1574. It was his son who performed the matchless exploit of relieving *Kinnmont Will*, Apr. 13, 1596, from the Castle of *Carlisle*, being accompanied with a mere handful—only 200 horse!

and noble lord, *James Duike of Chatteaularault, Erle of Arane, Lord Hammiltoun, &c.*; *Sir Johne Maxwell of Terreglis, kny^t*; *Sir Johne Bellendene of Auchnoule, kny*, Justice Clerk; *Maister Johne Spens of Condé, Aduocat to our souerane Lady*; *Andro Murray of Blak-Barony, Michell Balfour of Burlye, Thomas Scott of Haning, and Robert Scott of Thirlytane, Curatouris to pe said WALTER, for pair interes, for him self, and takand pe burding vpone him for his HAILL SURNAME, and pe Relict and bairnis of vmq^{le} Sir Walter Scott of Branxholme, kny^t, his gudeschir,¹ and als for Williame Cranstoun of that ilk, his bairnis and breder, the brether of vmquhile pe Laird of Chisholme; Johne Glaidstanis of that ilk, and his bernis; James Langlandis of that ilk, and his bairnis; Walter Vache of Syntoun, and his barnis; and for James Ormiston of that ilk, conditionally, as followis; and als, for all vperis his kynne, freindis, servendis, menne, tennentis, assistaris, and pairtakeris, one pat vper pairt; in maner, forme, and effect, as efter followis. THAT IS TO SAY, pe said LARD OF BUKCLEUCHT, nor na vper for quhome he takis burding, as said is, fall ony way persew pe said LARD OF CESFURDE, nor na vper comprehendit vnder pis present appointment, criminalé nor civilie, for ony Slauchter or blude committit in tyme bipast, and is content to be perpetuallie secludit pairfra, *per pactum de non petendo*; and fall neuer move actionn, beir hatrent, grudge, or displefour pairfor, bot bury and put pe samyn vnder perpetuale silence and obliuione; and to leif in perfite amité, lufe, and Cristiane nychtburheid, in all tymes cuming. PROVIDING alwayis, pat heirby pat pe said LARD OF BUKCLEUCHT, and all vperis quhome he takis burding, be na wayis preiugit anent pair actionis quhatsumeir pat pai haif intentit or may intent aganis *Sir Thomas Ker of Phairneyhirst, kny^t, Sir Andro Ker of Hirfell, kny^t, Robert Ker of Woodheid, Johne Haldane of that ilk, Gilbert Ker of Prymsjdloch, James Ker of Torbet, Robert Ker of Gradene, Andro Ker of Hietoun, pair barnis, brether, and seruandis, and all vperis pat ar nocht comprehendit vnder pis appointment; bot pat pai may persew and obtene pe samyn as pai think maist expedient, be pe law; and pat becaus pe saidis personis, being requirit be pe said LARD OF CESFURDE to cum with him, and to do pair devore, for pair pairt of pis appointment, hes refusit to do pe samyn; and als, becaus pat in pis present appointment, pair is na proffett nowther gevin nor takin, quhairby pe said LARD OF BUKCLEUCHT, and his freindis and vperis foirsaidis, ar preiugit anent pair saidis actionis; and pat it is pe exprefs mynd of all pe pairteis presentlie contractaris, pat pe samyn be füllelie reservit: AND siclyk, vpone pe vper pairt, pe said LARD OF CESFURDE, nor na vperis quhome-for he takis pe burding, fall in ony wyife persew pe said LARD OF BUKCLEUCHT, nor na vperis his kynne, freindis, servandes, menne, teimentes, assistaris, or pairt-takaris, criminalé or civilé, for ony slauchter or blude committit in ony time bipast; and is content to be perpetuallie secludet pairfra, *per pactum de non petendo*; and fall nevir move actionn, beir hatrent, grudge, or displefour pairfoir, bot bury and put pe samyn vnder perpetuall silence and obliuione, and to leif in perfite amité, lufe, and Cristiane nychtbourheid, in all tyme heirefter. ATTOUR, it is heirby exprellie and faythfullie contractit, pat for mair suir removeing, stenching,² and away-putting of all inymité, hatrent, and grudge, standand and consavet betuix pe saidis pairteis, throw pe unhappie slauchter of pe said vmq^{le} *Sir Walter Scott of Branxholme, kny^t,³* and for pe better continuance of amité, favour, and freindschip amangis pame in tyme cuming, the said SIR WALTER KER of *Cesfurde, kny^t*, fall, vpoun the xxij day of Marche instant, cum to THE PARROCHE KIRK OF EDINBURCHT, now commonelie callit SANCT GEILLIS KIRK, and pair, befoir none, in sycht of pe pepill present for pe tyme, reuerently vpone his kneis ask God mercy of pe slauchter foirsaid; and siclyk, ask forgevenes of pe same fra pe said LARD OF BUKCLEUCHT, and his freindis, quhilkis salhappin be pair present; and pairefter promise, in pe name and feir of God, pat he and his freindis fall trewlé keip pair pairt of pis present Contract, and fall stand trew freindis to pe said LARD OF BUKCLEUCHT and his freindis, according heirvnto, in all tyme cuming. THE quhilk pe said LARD**

¹ Grandfather.² Staunching; extinguishing.³ This great man was unhappily slain on the streets of Edinburgh, in October, 1552. To pave the way for a lasting reconciliation between the Clans, a Remission was granted to Sir Walter Kerr of Cessford, and to John Kerr of Fernihirst, under the Great Seal.

OF BUKCLEUCHT fall reuerentlie accept and ressaue, and promise, in þe seir of God, to remit his grudge, and neuer remember þe same; bot fall observe and fulfill his pairt of þis present Contract to þe said LARD OF CESFURDE, according to þe tennour pairof, siclyk, in tyme cuming. AND als, *Thomas Ker*, secund sone to þe said LARD OF CESFURDE, fall, God willing, solempnizeat and compleit þe band of matrimony, in face of Christis Congregatione, with *Scott*,¹ sister to þe said LAIRD OF BUKCLEUCHT, betuix þis and þe last day of Maij nixttocum, but ony tocher² to be payit be hir said bruder, or ony vþer freindis with hir: And þe said LARD OF CESFURDE fall provide þame ane honest and ressonable sustentatioune and leving, efferand³ to pair estait and conditioune; and als, fall caus þe said be infest in her virginité, in coniunct-fee or lifrent, with hir said future spous, and pair airis lauchfullie gottin or to be gottin betuix þame, quhilk failzeing, þe said *Thomas* airis quhatsumeuir, in all and haill landis or annualrent of þe availl of ane hundreth merkis be zeir, to be haldin of þe Superior be Resignatioun or Confirmatione, at þe plesour of hir said bruper; and pairestir, þe said to be infest in coniunct-fee or lyfrent with hir said future husband, at his and his said faderis gude will and pleasour, in sik landis and leving as pai pleis mak hir; quhilk is referrit in pair will. AND siclyk, *George Ker*, eldest sone and apperand air to þe said *Andro Ker of Fawdounsyd*, fall, God willing, solempnizeat and compleit þe band of matrimony, in face of Christis Congregatione, with *Jonett Scott*, fader-sister to þe said LARD OF BUKCLEUCHT, sa sone as pai fall be of perfyte age and habilitie for mariage, but payment of ony tocher to be payit be him, or vþer hir freindis with hir. AND gif it fall happin þe said *George* to deceis, befoir þe compleiting of þe said mariage, þan and in þat cais, his nixt bruper þat fallhappin to appeir or succeid air to his said fader or him, fall marie the said *Jonet*, tocher-fré; and siclyk, failzeing of hir be deceis, befoir þe said mariage, þan and (in) þat caise þe said *George*, and failzeing of him be deceis, his nixt bruper foirsaid, fall solempnizeat and end mariage with hir nixt sister þat fallhappin þan be alyve, tocher-fré; and sua, salang as þe said *Andro* fall haif ane sone, and the said *Jonet* ane sister, þe ane to marie þe vþer tocher-fré, as said is; ay and quhill mariage be anis complete amangis þame: AND gif (it) fallhappin þe said mariage to failzie in þe saidis *Georgis* or ony vþer his brederis defalt, þan and in þat cais, þe said LARD OF CESFURDE, be the tennour heiroyf, oblistis him and his airis to pay and deliuer the fowme of ane thousand merkis to þe said *Jonett*, or to hir vþer sister to quhome þe said mariage fall failzé, within XL dayis nixt estir þe said failzé be knawin. ATTOURE, becaus þe said LARD OF CESFURD hes ofbefoir requyrit and desyrit, vnder þe forme of instrument, *Sir Thomas Ker of Pharnyhirse, kny^t*, *Sir Andro Ker of Hirsell, kny^t*, and *Gilbert Ker of Prynsydloch*, for þame and pair freindis to adheir, concur, and assist to him in þis present agreance, and þat pai haif refuset þe samin, as is aboue writtin, thairfoir þe said LARD OF BUKCLEUCHT, nor his airis, fall nocht aggré with þame, or ony of þame, by⁴ þe awyfe of þe said LARD OF CESFURD and his airis; and gif it fallhappin þe said LARD OF BUKCLEUCHT, or his airis, to aggré with þe saidis *Sir Thomas*, *Sir Andrew*, and *Gilbert*, or ony of þame, by⁴ þe awyfe of þe said LARD OF CESFURD, befoir þe completing of mariage betuix þe said *George* or ane of his brethir with the said *Jonet* or ane of hir sisteris, as said is, without þe said LARD OF CESFURDE be previe and consent pairto, than and in þat cais, þe said *George*, nor nane of his brethir, salbe haldin or astrictit to compleit þe said mariage, bot salbe fré pairof; nochtwithstanding þis present Contract, and siclyk as gif the samyn had neuir bene maid. AND lik wyife, gif it fallhappin þe said LARD OF BUKCLEUCHT to aggré with þe saidis personis, or ony of þame, estir þe completing of þe said mariage betuix, ony of þe said *Androis* sonis and þe said *Jonet*, or ony hir sisteris, by⁴ þe awyfe of þe said LARD OF CESFURDE, than and in þat caise, þe said LARD OF BUKCLEUCHT oblistis him, with auise of his Curatouris foirsaidis, to content

¹ JANET, the eldest sister of Sir Walter Scott of Buccleuch, was married to Sir Thomas Kerr of Fernihirst, in anno 1569; 2. MARGARET, to Sir John Johnston of that ilk; 3. ELIZABETH, to 'the Captain of Crawford,' Sir John Carmichael of Meadowflat.—*Wood's and Crawford's Peerages*. ² Without any dowery or marriage-portion. ³ *Effairing*; corresponding. ⁴ Without; contrary to; independent of.

and pay to pe said LARD OF CESFURDE pe foume of ane thowsand merkis, as for pe tocher of pe said *Jonet*, or ony vper her sifter pat hapnis to be nearest, within XL dayis nixt eftir pe said aggreance, gif it happynnis to be maid, as said is; but¹ ony exceptionne or remeid be vertew of pis present Contract, quhairby pe said mariage fuld be tocher-fré, as is aboue specifeit, to be proponit or allegeit in pe contrar. PROVIDING alwayis, pat gef pe said LARD OF BUKCLEUCHT aggré with pe saidis *Sir Thomas*, *Sir Andro*, and *Gilbert*, or ony of pame, with auise of pe said LARD OF CESFURDE, than and (in) pat cais pe said LARD OF CESFURDE fall not laubour nor desyre pat pair offeris, ellis² offerit, be diminissit, bot rather pat pai be augmentit. AND zit, mairouer, becaus pair is particularelie deidlie Feid and actionis betuix pe said WALTER KER OF CESFURDE, *knycht*, and pe said *James Ormstoune of that ilk*, thairfoir pai salbe compromittit³ in *David Spotiswod of that ilk*, and *Thomas Hoppingill of that ilk*, to be chofin for pe pairt of pe said LARD OF CESFURDE; and in *James Langlandis of that ilk*, and *Nicholace Ruysfurd of Hundley, knycht*, to be chofin for pe pairt of pe said *Lard of Ormstoune*; and in odmanne and ourmanne,⁴ in caise of vareance or discord betuix pe saidis Jugis, to be commonel⁵ chofin be bayth pe saidis LARDIS OF CESFURDE and BUKCLEUCHT, anent pe taking, be pe said *Lard of Ormstoune*, of pe landis of *Nether Ancrome* and *Bailleie* pairof, in Tak, our pe said LARD OF CESFURDE heid, it being his kyndlie rowme⁶ of befoir, as he allegis; and anent pe slauchter of vmq^{le} . . . *Best*, servand to pe said LARD OF CESFURDE: AND als, anent all vper materis, actiones, querrellis, and debeittis betuix pame; and pai to be bund to abyde at pe decreit and sentence of pe saidis Juges and ouermanne, or maist pairt of pame, deliuerand in pe saidis materis, quhilkis salbe haldin to deliuer pairin, betuix pis and pe first day of August nixtocum; and ane compromit⁷ to be maid pairupone, and extendit in ampill forme, as vse is in sic caissis. AND gif it salhappin pe said *Lard of Ormstoune* to reclame fra pe Decreit to be gevin be pe saidis Jugis and ouermanne, or maist pairt of pame, and nocht to abyde pairat, and fulfil his pairt pairof, as he fall be ordanit be pe same, than and in pat caise, pe said LARD OF BUKCLEUCHT fall refuse him, and fall nowther manteine, fortifé, nor assist him pairefter, in ony tyme cuming; bot fall tak pairt and fortifé, in honest and lesum⁸ maner, with pe said LARD OF CESFURDE, in his contrar. AND gif pe said LARD OF CESFURDE salhappin to reclame fra pe said Decreit to be gevin as said is, than and in pat caise, pe said LARD OF BUKCLEUCHT fall tak pairt with pe said *Lard of Ormstoune*. AND finalé, pe saidis pairteis, be pe tennour heirof, bindis and obliissis pame and pair airis, pat pai and personis abouewrittine, for quhame pai haue takin burding, respectiue, for pair awin pairtis as said is, fall in all tyme cuming keip and retene amité, freindschip, lufe, favour, and kyndnes, ilkane to vperis,⁹ without ony grudge, or occasioun to be mouit in pe contrar, be pame or ony of pame, to vperis,¹⁰ be ony maner of way, in tyme cuming. AND gif it salhappin ony contraversé or pley to fall betuix ony of pe freindis abouewrittin, comprehendit vnder pis present Contract, for taking of vperis steding or rowme,¹¹ owther in tyme bigane or tocum, thanne and in pat caise, pe mater salbe first schawin to pe saidis LAIRDIS OF CESFURDE and BUKCLEUCHT, be quhais auise pe saidis pairteis sal cheis¹² foure frendis, with ane ouermanne as pai can aggré one, for ending and deciding of pe said contraversé; and gif pe pairteis can nocht aggré one pe said ouerman, pan and (in) pat cais pe saidis LARDIS OF CESFURDE and BUKCLEUCHT fall cheis ane ouermanne quhame pai can aggré one; quhilk ouermanne being chofin be pame, it fall nocht (be) lesum to pe pairteis to refuse him, bot to approve and chuse him: and gef pe saidis LARDIS can nocht aggré one pe said ouerman, than and in pat cais, pai fall huimlé fwte¹³ and desyer pe QUENIS MAIESTIE and COUNSALE to cheis ane ouermanne; quha being chofin, pe pairteis salbe haldin and bund to stand content with him, and to abyde at his and pe Arbitratouris delyuerance, or maist pairt of pame delyuerand; vpon pe contra-

¹ Without, &c.² Already.³ Compromised; referred to the arbitrament of.⁴ Umpire and

Oversman.

⁵ Mutually.⁶ Certain property held by him and his ancestors as *kyndlie tenants*.⁷ Award;

Decreet Arbitral.

⁸ Lawful.⁹ To each other; each party to the other.¹⁰ Each other.¹¹ For

taking each other's farm-steading or possession.

¹² Elect; choose.¹³ Make suit; petition.

verfè pat falhappin to be debatabill for þe tyme, but¹ ony declaratioune to be maid in þe contrar. AND for obferuing, keping, and fulfilling of all and findré þe premisses, aþer of þe faidis pairteis bindis and obliſſis þame faithfullie to vþeris,² in þe maist ſtrait forme and ſicker ſtile of obligationne can be dewiſit, but³ frand or gyle, na remeid nor exceþtioune of law quhatſumevir to be proponit or allegeit in þe contrar; renunceand þe famin, for þame, pair airis, executouris, and affignais, for now and evir, be þir preſentis. AND for þe mair ſecurité, þai ar content pat þis preſent Contract be inferit and regiſtrat in þe Bukis of Counſale, and decernit to haue þe ſtrength of ane Act and Decreit of þe Lordis pairof; and pat Letteris and executoriallis to be direct pairvponne, for compelling of aþer of þe faidis pairteis to fulfill þe ſamyn, for pair pairteis, to vþeris, in forme as efferis: AND for acting and regiſtrating heiroy, þe faidis parteis makis and conſtitutis, be þir preſentis,⁴ [*Maifter David Borthuik*] thair vndowit and irrevocabill procuraturis, gevand and committand to þame, coniunctlé and feueralé, pair full power, expres bidding, and chaige, to compeir befoir þe Lordis of our ſouerane Ladeis Counſale, quhatſumevir dayis and place lauchfull; and pair deſyir þis preſent Contract to be regiſtratt in þe faidis Bukis of Counſale, and þe faidis Lordis to interpone pair auctorité pairto; promittand⁵ to abyd ferre and ſtabill, &c. IN WITNES of þe quhilk thing, bayth þe faidis pairteis and Curaturis abouewritin, for pair intereis, hes ſubſcriuit þis preſent Contract with pair handis; and als DAME JONET BETOUNE,⁶ þe relict of þe ſaid vni^q^{le} *Sir Walter*, hes, in ſigne of hir conſent to þe premisses, ſubſcriuit þe famin with hir hand, day, 3eir, and place ſoirfaides, befoir þir Witneſſis, *Sir James Douglas of Drumlanrig, knyght, Johne Stewart of Trocquair, Patrik Murray of Fallowhill, ... Murray of Cokpule, and Thomas Sinclair*, Writter to þe Previe Seall, with vþeris diuerſe.

[*Sic ſubſcribitur*] WALTER KER OF CESFURD. WALTER SCOT OF BUKCLEWCH. JANET BETOUNE, LADY OF BUKCLEWCH. JAMES.⁷ THOMAS SCOT OF HANYNG. M. JOHNE SPENS, Curatour aboue writtin. JOHNE MAXVELL. J. BELLENDENE, as Curatour. ROBERT SCOT OF THIRLSTANE,⁸ with my hand at þe pen, led be *David Lauté*, Notare Publict.⁹

III. BAND *ſubſcreuit at KELSO, be THE BARONIS, &c. of the Scherefdomes of BERWIK, &c.* 6th April, 1569.

(THE Editor believes that little apology will be deemed requiſite for once more encroaching on the limits of this work, in his deſire to preſerve, in this place, the following remarkable document, the original of which is deposited in the General Register Houſe, Edinburgh. The reader will readily perceive, that it is chiefly from an extenſive peruſal of ſuch original and authentic Papers, that he can expect to arrive at a minute knowledge of the internal ſtate of Scotland during the darkeſt periods of our Hiſtory.)

BE IT KEND till all men be þir preſent letteres, WE THE BARONIS, landit men, Gentilmen, Inhabitantis of THE SCHIEREFDOMES of BERWIK, ROXBURGH, SELKIRK, PEBLIS, and Proveſtis and Baillies of Burrowis and Townis within þe ſaids boundis, in name of þe Inhabitantis of þe ſamyn, vnder-ſubſcriuand, to be bundin and obleiſt, and be þe tennour heiroy, bindis and obleiſſis ws to þe KINGIS MAIESTIE, oure ſouerane lord, and his deareſt couſing JAMES ERL of MURRAY, Lord Abernethie, REGENT to his hienes his realme and lieges, as followis: THAT IS TO SAY, florſamekill as my ſaid

¹ Without.

² Each other.

³ Without.

⁴ In all deeds where a claule for Registration is inſerted,

a blank is left to inſert the name of the Procurators. In the preſent inſtance, all the parties appeared perſonally, with the exceþtion of the Duke, who had granted a procuracion to the perſon whoſe name is filled up, according to cuſtom, in the Register.

⁵ Promiſing.

⁶ This able Lady has been rendered immortal by *Sir Walter Scott*, in his Lay of the Laſt Minſtrell. She was daughter of *John Beaton of Creich*, and poſſeſſed the hereditary abilities of her family to ſuch a degree, that the ſuperſtition of the vulgar attributed them to magic. After her huſband's murder, ſhe rode at the head of her Clan.

⁷ James Duke of Chateſtherault, who uniformly adopted this princely mode of ſubſcribing his name.

⁸ Anceſtor of Lord Napier; a better ſwordſman than an expert clerk.

⁹ It was by no means unuſual, at that period, that perſons of conſiderable rank were but indifferently ſkilled in ſcholarſhip. All buſineſs of importance was of old tranſacted by churchmen or notaries; the office of which laſt was frequently performed by prieſts, who thereby added conſiderable emoluments to the revenues of their monaſtery.

lord Regentis grace hes at all tymes, and specialie sen his acceptatioun of pe regiment of pis realme, takin greit and paynefull travellis in pe quieting of pe bordouris pairof, and namelie of pe rebellious people Inhabitantis of pe cuntrie of LIDDISDAILL, and vtheiris Thevis, AND we having regard to the innumerabill slauchteris, fyre-rafingis, heirschippis, and detestabill enormities, dalie committit be pame vpoun pe peceabill and trew subiectis of pis realme, in tymes bipast, quhairin pai ar nocht abill to execute pair crueltie, gif we, in pe feir and obedience of God and our fouerane lord, aufauldie¹ concour togidder to resist pame, THAIRFOIR we, and euerie ane of ws, underscrivand, be thir present letteres, avowis and declairis our selffis obedient subiectis to THE KINGIS MAIESTIE, oure onelie fouerane lord and his autoritie, and proffessit inymeis to all Thevis, Inhabitantis of THE CUNTRIE OF LIDDISDAILL, ESKDAILL, EWISDAILL, and ANNANDERDAILL; and in speciall, to all personis of pe fuirnames of ARMESTRANG, ELLOT, NIKSOUN, CROSER, LITTILL, BATESOUN, THOMSOUN, IRWING, BELL, JOHNNESTOUN, GLENDONYNG, ROUTLAIGE, HENDERSOUN, and SCOTTIS OF EWISDAILL, and wperis notorious Thevis, qnhair enir pai dwell, and to pair wyffis, bairnis, tennentis, and seruandis; Oblissand ws, pat we nor nane of ws at ony tyme heireftir, fall reffet, supplé, or intercommoun with ony of pe saidis Thevis, pair wyffis, bairnis, or seruandis, or gif pame meit, drink, hous, or herbry; or suffer ony meit, drink, or victuallis to be bocht, had, or cairit to pame, furth or throw our landis, bailleries, townis and boundis, quhair we may lett:² Nor zit fall we tryist or haue intelligence with pame, in previe or apairt, without knawlege and leif of THE WARDANE obtenit to pat effect: Or suffer pame to resort to Marcattis or tryistis, throw oure boundis: Nor zit permit pame, pair wyffis, bairnis, tenentis, or seruandis, to dwell, remane, or abyde, or to pasture pair gudis³ vpoun ony landis outwith LIDDISDAILL, except sic⁴ as within viij dayis eftir pe dait heirof, fall find sufficient and resposnall fouerteis⁵ to THE WARDENIS OF THE MARCHES and their clerkis, that pai fall reforme all enormities committit be pame in tyme bipast, and keip gude rewle in tyme cumming, and be obedient to pe Lawis, quhen pai falbe callit vpoun: AND all vtheris not findand pe said fouertie, within pe said space, we fall persew to pe deid with fyre, sward, and all vther kynd of hostilitie, and expone⁶ pame, and all ping in pair possessioun, in pray to pe men of weir, as oppin and knawin inymeis to God, THE KING oure fouerane, and this Commoun-weill, without fauour, assurance, or freindschip, Renunceand all kyndnes, Bandis, promiseissis, assurances, and conditionis, pat we or ony of ws hes enterit in with pame, in ony tyme bigane, befor pe dait heirof, as we will answere to God, and vpoun our dewtie and allegiance to our fouerane lord his autoritie, and Regent foirsaid. AND in caise we failzie in ony pairt of pe premissis, or revelis not pe contravenaris of pis BAND, gif we know pame, we ar content to be pyneist pairfoir, according to THE GENERAL BAND, and panis contenit pairin. AS ALSUA, in caise in pe resistance or persute of ony of pe said Thevis, it fallhappin ony of pame to be flane and brint, or ony of ws and our freindis to be harmit be pame, we fall euir esteme pe qwerrell and deidlie Feid equall to ws all, and fall nenir aggré with pe same Thevis, bot togidder, with ane consent and avyfe: And in pe menetye fall tak afauld, trew, and plane pairt, ilk ane with vther, and specialie, fall assist THE LARD OF BUKCLEWCH, and vtheris LARDIS maist ewest⁷ to pe saidis Thevis, at all occasionis convenient. THIS our present BAND quhill pe first day of August nixtocum in full effect and force inviolablie to endure, to pe effect a perpetuale

¹ Sincerely; heartily; literally, *one-foldly*, without duplicity. Even to this day, *two-fold*, *two-faced*, &c. are employed to denote *double* or deceitful persons. ² Hinder. ³ Flocks of sheep, or cattle. ⁴ Such persons. ⁵ Cautioners. ⁶ Expose; give them up. ⁷ Nearest in point of local situation. It must be

confessed, that this very remarkable Document gives rather an unfavourable view of the state of the *Borders* at the commencement of the reign of King James VI.; but reference to other 'Bands' and State Papers, which are faithfully conveyed to the public in the works of *Sir Walter Scott*, *Redpath's Border History*, and similar sources of information, prove the picture to be correct and unexaggerated. The influence of THE KING and his Lieutenants was but small, when opposed by the more powerful Barons; who could, in an incredibly short space of time, by means of their signal-fires, &c. alarm the country, and gather a prodigious force, with which they could easily overwhelm the royal troops. The usual policy of the Crown, therefore, was to appoint, as WARDENS OF THE MARCHES, the most stirring spirits of the time; who, vain of their 'brief authority,' were enjoined into the measures of the King and Council, and thus preserved 'guid rewle' on the Border. The private Feuds of the several Clans were also turned by the Government to good account; and by means of such 'Bands' as the present, the more unruly tribes were kept in check.

and perfyte ordour anent þe repressing of þe saidis Thevis may be takin in þe menetyme. IN WITNES QUHAIROF, we haif subferyuit þe samyn with our handis, as followis, AT KELSO, þe sext day of Aprile, the 3eir of God I^m.V^e. three scoir nyne 3eris.

S ^a NICHOLAS RUTHERFURD of Hundoley,	ANDRO KER.	ALEX ^R L. HOME. ¹
knyt.	GILBERT KER of Prinsydouch.	WALTER KER of Cesfurd.
JHONE RUTHERFURD of Hunthill.	JOHNE EDMESTOUNE of yat Ilk, knyt.	BUKCLEWTH, knyt.
JHONE MOW of yt Ilk.	WILLIAME DOWGLAS of Cavers.	THOMAS KER of Fernhirst.
RICHARD RUTHERFURD, Provost of Jedbur ^t .	JHONE HALDANE.	WILLIAME KER.
JAMES SCOTT, Baillie of Selkirk.	THOMAS TRUMBUEL of Bederowill.	PATRIK MURRAY of Faulahill.
JAMES GLEDSTANES of Coklaw.	RICHART RUTHERFURD of Edzersstone.	WALTER KER of Dolphinstone.
WATT SCOTT in Beilhauch.	ALEXANDER COKBURN.	ANDW.
WATT SCOTT of Tuschelaw.	ROBERT SCOT off Edilstane.	ANDRO KER of ffa . . .
HECTOR TURNBULL, Tutor of Mynto.	THOMAS MAKDOWELL.	T. CRANSTOUNE of yt Ilk.
CUTHBERT CRANSTOUN of Thirlstanemanis.		THOMAS KER of Nether Howdane.
ROBERT SCOTT, Baillie of Hawyke.		

Sheep-Stealing—Common Theft and Reset of Theft.

Jun. 21.—JOK SCOTT, alias callit *Jok the Sukler*, sone to Thome Scott in Nether Braidlie.

Dilaitit of airt and pairt of the thiftious Steilling and away-taking fra Adame Almoufe, ane of the Laird of Chisholmes tennentis, furth of that pairt of the landis of Chisholme callit Mouflie, occupyit be the said Adame, ffoure scheip pertening to him; committit in the moneth of October, 1612. ITEM, off tua scheip, viz. ane 3ow² and ane hog,³ pertening to George Scott, callit of Deringstoun, furth of his landis of Castell-hill; in the moneth of Februar, 1613. ITEM, off ane blak 3ow, pertening to Rowie Scott, callit *Rowie of Huttikill*, furth of the Lyn besyde Eilrig; at Mertimes, 1614. ITEM, off sevin 3ow scheip, pertening to James Rowie in Raeburne, ffurth of the landis of Raeburne, in Eskdaillmure; in the moneth of October, 1613 yeiris. ITEM, ffor cowmone Thift, and cowmone Reslet of Thift.

PERSEWARIS, Rowie Batie, callit James Rowie; Rowie Scott, in Vtterfyde; Walter Scott, his sone; informeris to his Maiesteis Aduocat: Sir Williame Oliphant of Newtoun, knyt⁴.

PRELOCUTOUR in defence, Mr Vmphra Blindschellis, Aduocat.

The pannell denyis the haill poyntis of Thift contenit in his Dittay.

ASSISA.

Frances Airmestrang, callit of Andro Airmestrang of the Kirk-	Walter Gledstanes of Quhytelaw,
Kynmonthie, ⁴ toun,	Robert Wauch of Hoip,
Williame Airmestrang, his sone, Williame Airmestrang in Nether	Robert Scott in Schellifwoid,
in Gryftaill, Wrae,	Robert Airmestrang, callit <i>Rattas</i> ,
Alexander Armestrang in Wallis, George Langlandis of that Ilk,	Williame Airmestrang, callit
Johnne Ellote of Fallin-afche, Lancie Airmestrang in Qubit-	<i>Bald</i> , ⁵
Thomas Airmestrang in Gingillis, hauch,	Hectour Trumbill of Clarielaw.

VERDICT. The Assyse, having ressonit and voittit vpon the pointis of the

¹ The two principal columns contain autograph subscriptions, the third is all written in the same hand.

² Ewe.

³ A year-old sheep.

⁴ A descendant of *Kinmont Will*, famous in History and

Border Ballad. ⁵ *Bauld*, bold; intrepid. Bald-headed was uniformly written and pronounced *beld*.

Dittay, and being ryplie and at lenth advyfet thairwith, togidder with dynerfe Depositiones producet be our fouerane lordis Aduocat, for verificatioun of the said *Jok Scott* his giltines of the saidis crymes; as also, vpone confideratioun had be thame to the sweiring of thais tua pointis of Dittay, suorne in their presens be the saidis thre persewaris; thay all, in ane voce, be the mouth of the said George Langlandis of that Ilk, chancellor, ffand, pronuncet, and declairit the said *Jok Scott*, callit *the Suckler*, to be ffylet, culpable, and convict of airt and pairt of the haille poyntis of Thift aboue specifeit; and of cowmone Theft, and Resset of Thift.—SENTENCE. To be tane to the Mercat-croce of Edinburgh, and vpone ane gibbet thair set vp, to be Hangit quhill he be deid: And all his guidis to be escheit, &c.

Egyptians or Gipsies contemptuously repairing and abiding within the Realm.

[THE following is one of the instances of the persecution of the once formidable race of GIPSIES, whose numbers were so considerable, as to excite the legislature to make various enactments for their banishment and extirpation. Notice of this pursuit has been preserved in the *Denmylne MSS.* Adv. Library, among various Minutes of the Proceedings of the Privy Council of Scotland, in the following brief memorandum. August 28, 1616. “ANENT that mater of EGIPTIANIS, now lyand in the *Tolbuith of Edinburgh*, thay war only convict for contraveining the Act of Parliament, in not depairting furth of the Kingdome; and no vther cryme was layed to thair charge, and no cryme is knawin whairvpone thay may be challengit. The *Counsell*, according to HIS MA^{TIES} direction, hes gewin Warrant for staying the pronouncing of Dome, till HIS MA^{TIES} farder pleasour be knawin.”

The Editor has found no other trace of the fate of these unhappy creatures; but it is hoped that the King contented himself with ordering their banishment from the country, under the usual certification.]

Jul. 19.—JOHNE FAA, Egiptiane¹; James Faa, his sone; Moyfes Bailzie, Egiptiane; and Helene Broun, spous to Williame Bailzie, Egiptiane.

Dilaitit of contravening of the Act of Parliament, maid in anno 1609 yeiris, in thair contemptuous repairing to this cuntrie, being repute and haldin to be Egiptianis, and abiding thairintill, nochtwithstanding thairof, &c. viz.

DITTAY against Johnne Faa, &c.

FORSAMEKILL AS, be Act of Parliament, haldin at Edinburgh, vpone the xxiiij day of Junij, I^m.Vj^c. and nyne 3eiris, it is expresse provydit, statute, and ordanit, that all Vagabundis, Soirneris, and cowmone Thevis, cowmonlie callit EGIPTIANIS, fould depairt furth of þe kingdome, and remane perpetuallie furth pairrof; and nevir to haif returnet agane within the samyn, nor be fund pairintill, eftir þe first day of August pairrestir, in the foirsaid 3eir of God I^m.Vj^c. and nyne 3eiris, vnder the pane of deid; and that it fould be liefum to all his Maiesteis

¹ See Jul. 31, 1611.

guid fubiectis, or ony ane of thame, to caus tak, apprehend, impriffone, and execute to death, all maner of Egiptianis, alfweill men as wemen, as cowmoun, notorious, and condampned Thevis; only, to be tryit be ane Affyse that thai ar callit, knawin, repute, and haldin Egiptianis: As the said Act of Parliament at lenth proportis. NOCHTTHELES, it is of verritie, that the foirfaidis perfonas, being Egiptianis, sua callit, knawin, repute, and haldin, in contempt of þe said Law and Act of Parliament, as Vagabundis, hes lurkit and remanit within this kingdome, sen þe making and publicatioun of the said Act, and nawayis hes past away furth pairof: At þe leift, aganis þe tennour of þe said Act, hes, sen þe said first day of August, 1609 ʒeiris, repairit within this cuntrie, and ar tane and apprehendit as Vagabundis, and maisterles lymmeris¹ and thevis, reput and haldin, knawin and callit to be Egiptianis; quhairin thay and ilk ane of thame hes contravenit þe tennour of þe said Act of Parliament, and incurrit þe panes and pwneschment mentionet pairintill; quhilk aucht and sould be inflictit vpon thame, with all rigour, to þe example of vþeris of þair race and unhappie Companie to eschew þe lyk heireftir.

PERSEWER, Sir Williame Oliphant, kny^t. PRELOCUTOR in defence, Mr Thomas Wilsoun, Aduocat.

IT is allegit be the pannell and thair prelocutour, that the Dittay is nawayis relevant to pas to ane Affyse, in respect it is nocht subsumet thairintill, that the perfonas dilaitit was within the cuntrie, the tyme of the making and the publicatioun of the said Act of Parliament, quhilk is the grund of this persute; nather yit is the pannell tane and apprehendit for ony Thift, Soirning, or Oppressioun, nor accuset thairfoir: Off all quhilkis crymes, thay ar willing to byde ane tryell: And thairfoir, the Dittay, as it is fet down aganis the pannell, can nocht pas to ane Affyse.—It is ansuerit be my lord Aduocat, that the allegiance aucht to be repellit, in respect of the Dittay and Act of Parliament.

THE Justice Repellis the allegiance; and Ordanis the pannell to pas to ane Affyse.

VERDICT. The Affyse, be the mouth of Thomas Creichtoun, mercheand in Edinburgh, chancellor, stand, pronuncet, and declairit the saidis *Johnne Faa*, *James Faa*, his sone, *Moyfes Bailzie* and *Helene Broun*, all Vagabundis, and repute and haldin to be Egiptianis, to be ffylet, culpable, and convict of contravening the tennour of the said Act of Parliament.

THE Justice Continewit the prouneatioun of Dome vpon the perfonas foirfaidis, quhill he be advyset with the Lordis of Secreit Counfall: And ordanit thame to be returnit to waird, to the Tolbuth of Edinburgh, in the meyne tyme.

Jul. 24.—SENTENCE. The Justice, in respect na cautoun could be stand

¹ In our old Laws, this term was always applied to denote a worthless scoundrel, a professed thief, or *reiver*. At present it is applied solely to females of loose character.

be thame, for thair departour furth of his Maiesteis dominionis, and that thai sould never returne agane within the samyn during thair lyftymes, ilk ane of thame vnder the pane of ane thowseand merkis money; accoirding to ane Ordinance of the Lordis of Secreit Counfall, direct for that effect, vnder my Lord Chancelloris subscrption, daitit the xxiiij day of Julij instant; be the mouth of Johnne Dow, dempster of Court, Ordanit the saidis Johnne Faa, James Faa, his sone, Moyfes Bailzie, and Helene Broun, Egiptianis, and sa reput and haldin, tane and apprehendit, to be tane to the Burrow-Mure of Edinburgh, and thair to be HANGIT quhill thay be deid; and all thair moveabill guidis to be escheit, &c.

Quhilk was pronuncet for Dome; and that, conforme to the Ordinance of the Lordis of Secreit Counfell, of the dait above expremit.

Slaughter.

Jul. 31.—ALEXANDER DUMBAR of Kilboyak, and others.¹

Dilaitit for the Slauchter of vmq^{le} Alexander Dumbar of Wastfield.

PERSEWARIS, James and Thomas Dumbaris, as brether.

THE Justice, for cauffis moveing him, speciallie, that the pairties war vnder the termes of aggrement, Ordanit the dyet to Defert.

Usurping his Majesties Authority—Convocation of the Lieges—Murder under Colour of Law, &c.

[THE particulars of this very remarkable and keenly contested Case² are so fully narrated in the proceedings which follow, and in the various Histories of the *Family of Gordon and Sutherland*, that it is unnecessary for the Editor to add any thing farther. It only seems proper to give, in this place, the following notice from the MS. Collections of *Sir James Balfour*, preserved in the Library of the Faculty of Advocates; which, though only relating to the preliminary arrangements, forcibly shows the spirit with which such matters were conducted, even before the Supreme Criminal Tribunal of the kingdom, where the parties were connected with noble and powerful families.—August 28, 1616. ‘THIS day being appointit to THE LAIRD OF GEICHT, *Johnne Gordon, Sheref-depute of Aberdein*, and the rest of thair complices, for thair compeirance before the Justice and his deputis, in the Tolbuith of Edinburgh, to vnderly the lawis for the slaughter of vmq^{le} *Frances Hay*; the Sheref-depute, accompanied with sum Gentilmen of the name of *Gordon*, and vtheris, came to this burgh, with outwarde shew, and apperance to have presented himselff to his tryell; and by his Petition, gewin in this day to the *Counsell*, he craved Licence to sum Gentilmen of his name to accompany and assist him at the Bar: Which was grantit to sex perfoneselected and maid choise of be himselff. *The Erle of Erroll* came lykwayes heir, for persute of that mater, he haveing procurit ane Licence from the *Counsell*, convenit at *Aberdene*, for his cuming heir; with conditioun that he sould keip his lodging, and not come furth thair of, without the *Counsellis* Warrant. He, be Petition gewin in this day to the *Counsell*, cravit Licence that he might go to the bar, to assist the persute of that mater; bot, in regaird he was excommunicat, it was not thought expedient that he sould go in persone to the bar, becaus it was suspectit

¹ See Jul. 24, 1611. On Jan. 15, 1617, “*Sir Williame Hairt*, his Maiesteis Justice, Ordanis the dyet to defert.” Whereupon *George Duff*, writer, protests for relief of the cautioners, &c. ² See also two entries immediately following this; and especially, that of *George Gordon of Geicht*, Feb. 26, to June 27, 1617.

that the excommunication would be obiectit aganist him, to debar him from proces: And als, becaus HIS MA^{TIES} *Advocat* was pairtlie perfewar in the Letteris, who wald profecute that mater, als weill as if *the Erle* war present. The Court being fenfit, *the Justice, Justice Clerk*, with the haille memberis of the Court, and the pairteis perfewaris being all present, and *the Sheref-depute* being constantlie looked for to compeir, he notwithstanding absentit him selff; and is thairfoir declairit fugitiue, and his cautioneris vnlawit.']

Aug. 28.—JOHNNE GORDOUN of Clubisgoule, Scherref-depute of Aberdene.¹

Dilatit ffor airt and pairt of the Vfurpatioun of our Souerane lordis royall power and authoritie, in the arrogant and presumptuous cuming, with convocatioun of ane grit number of his Maiesteis legis, vpon the xvij day of December I^m.V^c. and fyftene yeiris, to the duelling hous of *Williame Hay of Logyruif*; and without ony lauchfvll Warrant, authoritie, or Commissioun, puting violent handis in the persone of vmq^{le} *Frances Hay, sone to vmq^{le} George Hay of Ardlethame*, bringing him perforce and aganis his will furth of the said hous, cayreing him with ane grit number of men in airmes to the burgh of Aberdene, as ane captiue and prissoner; committing him in prissone, within the ludgeing of *George Gordoun of Geicht*, ane of his principall takeris, callit "*the Bony Wyfes Inne*," in the Gallowgait of Aberdene, keiping and detening him in maist strait firmance thairintill, be the space of fourtie aucht houris; nocht suffering any man of his kyn or freindis to haif accefs to him, during all that tyme: Committit be the said *George Gordoun of Geicht, Williame Hay*, his sone in law, *Johnne* and *Alexander Gordones*, his brether, James Baird his seruand, and vtheris thair complices. Off the speciall causeing, sending, hounding out, airt, plane pairt-taking, counfelling, devyseing, command, assistance and ratihabitoun of the said Johnne Gordoun Scherref depute of Aberdene, and quha, during the tyme of the said Frances imprissonement within the said Inne, resoirtit dyuerse tymes thairto with the said Laird of Geicht, to countenance and assist the vnlauchfull keiping and detentioun of the said vmq^{le} Frances thairintill: AND sicklyk, the said Johnne Gordoun of Clubbifgoule, pretendit Schereff depute of Abirdene, being giltie in his own conscience, befoir God, of parcialitie and preoccupyt opinioun, and knowing weill aneuch that the tyme of his priuilege, gif he ony had, was expyrit; notwithstanding thairof, to the heich offence of Almichtie God, contempt of our Souerane lordis princle power, and to the grit scandall of the Justice of this kingdome, ffor his presumptuous and arrogant vfurpatioun and assumeing to him selff, with ane evill conscience, of the place and office of the Criminall Judge, in presenting him selff in Judgement, and setting down thairintill as Judge, ffenceing of Court, and calling and accuseing befoir him of the said vmq^{le} *Frances Hay*, for the allegit Slauchter of vmq^{le} *Adame Gordoun*, brother germane to the said

¹ See Feb. 26, 1617, &c.

Laird of Geicht; and for nocht admitting and suffering prelocutouris to compeir and defend the said vmq^{le} Frances, the tyme of the said persute; bot be the contrair, debarring *Mr Williame Barclay, Aduocat*, quha was reddie to compeir in his defence, and quha had mony guid and sufficient exceptiones to haif proponit, to haif stayit¹ his puting to the knowlege of ane Assyse, for the said allegit cryme; be sending of *George Leslie of Kincragie*, with ane commissioun to the said Mr Williame, discharging him, vpon the perrell of his lyfe, to compeir in the said Frances defence; and assureing him, gif he sa did, fra he war anes down the stair,² thair sould be tuentie quhingeris put intil him: And sua, for debarring of the said vmq^{le} Frances, and defrauding him of the benifeit of lauchfull defence, quhilk God and nature hes indifferentlie allowit vnto all men: AND for the maist partiall proceeding aganis the said vmq^{le} Frances, nochtwithstanding of the premisses, in putting him to the knowledge of ane Assyse of ane number of persones selectit and maid chose of be the said *Laird of Geicht*, persewar, and his freindis, and altogidder adictit to thair mynd and directioun; quha, accoirding thairto, convictit him of the said allegit Slauchter: AND for the partiall and wilfull pronouncing vpon the said convictioun, of the Dome and Sentence of daithe aganis the said vmq^{le} Frances, to loise his heid: AND for that effect, maist partiallie and vndeutifullie, aganis the office of ane Judge, delyuering of the said Frances bak agane to the said *Laird of Geicht* and his complices, the pairtie persewaris, quha tuik him to thair awin privat prissone; and vpon the morne thairefter, caryeit him furth at ane bak zet, to ane hole betuix tua mottis,³ quhair thay crowned thair tragidie with so boutcherlie mangling and demaning⁴ the puir gentill-man, be geving to him sex feuerall straikis vpon his schoulderis, heid, and nek, as the lyk hes nevir or feldome bene hard or sene: AND sa, vnder the pretext and cullour of law, and scandall of Justice, ffor the crewall and barbarus massacring and slauchter of the said vmq^{le} Frances, be the said Johnne Gordoun, scheref-depute, his pretendit vsurpeing Judge; quha thairthrow in a heich degrie hes contemptit and abusit his Maiesteis royall name and authoritie, in making it a cloke and cover to the revenge of the perticuler querrell of him selff and his freindis. In maner specifeit and sett down in the criminall Letteris direct aganis him thairupoun.

THE Justice, be the mouth of Thomas Young,⁵ dempster of Court, Ordanit Adame Gordoun of Boighoill (as cautioner and fouertie for John Gordon's entry) to be vulawet in the pane of ffyve hundreth merkis, for the nocht entrie: And that the said Johnne Gordoun fall be denuncet our fouerane lordis rebell, and put to his hienes horne; and all his moveabill guidis to be escheit, &c.

¹ Delayed; prevented.² By the time he got down stairs.³ To a hollow betwixt two

moats or fosses; the ground being probably selected, or constructed, so as to prevent a rescue of the unhappy victim of their barbarity.

⁴ Using; treating.⁵ Who appears in this office for the first time.

Murder under Colour of Law, &c.

Aug. 28.—GEORGE GORDOUN OF GEICHT,¹ Williame Hay, his sone in law; Johnne Alexander, Robert and Patrik Gordones, brether to the said Laird of Geicht; Johnne Gordoun of Clubisgoule, Scheref depute of Aberdene; Williame Gordoun in the Maynes of Geicht, servand to the said Laird; Johnne Sinclair, brother to the Laird of Achannachie; Andro Nicolfoun, servand to the said Williame Hay; Patrik Cantlie in Airdifferie, and Andro Mylne, ffalconer.

Dilaitit for the usurpation of our souerane lordis autoritie, &c.² at the instance of Mariorie Keith the relict of vmq^{le} *George Hay of Ardlethame*, as mother; George Hay, as brother to vmq^{le} Frances Hay, sone to the said vmq^{le} George Hay of Ardlethame; and of Sir Williame Oliphant of Newtoun, kny^t, Aduocat to our souerane lord, for his hienes intreis. The said Mariorie, &c. producet the Letteris deulie execute and indorfate; vpone the production quhair of, the saidis perfewaris askit instrumentis, and protestit for releif of their cautioneris.

Murder under Colour of Law, &c.

Aug. 28.—GEORGE GORDOUN OF GEICHT, and others above mentioned, and James Baird,³ in the Maynes of Geicht, servand to the Laird of Geicht.

Sir William Oliphant of Newtoun, kny^t, producet his Maiesteis Letteris deulie execute and indorfate, raifit at his lordschipis instance, as Aduocat to his Maiestie, for his hienes intreis allanerlie.⁴

Forcible Abduction and Marriage of a Minor, without having obtained the lawful consent of his Guardians.

Nov. 8.—SIR PATRIK CHIRNESYDE OF EIST NISBET, Alexander Cranftoun of Burnecastell, Johnne Cranftoun, brother to Williame Lord Cranftoun, Williame Home of Hardeifynlne, and Williame Moffet, his servand.

Dilaittit of violent Rape and Raveifching,⁵ taking, and detening of Adame Frenche of Thornydykis, ane young bairne scarce past xiiij 5eiris of age, furth of the Toun of Hadingtoun; and thairfra transpoirting him to Rymmiltoun-law,

¹ See Feb. 26, 1617. ² As in the previous case. ³ This person is omitted (probably by a clerical error) in the former case. ⁴ Alone; solely. ⁵ These terms, in the Ancient Criminal Law of Scotland, as has been frequently noticed in this work, signify merely the act of carrying off by violence, or against the will of the party so abused. The term employed to denote RAPE, as now understood in Scotland and England, was 'FORCEING.' 'Rapt' and 'Raveifching' only inferred what is at present technically termed 'Forcible Abduction.' A stronger illustration of the meaning formerly attached to these phrases could hardly be adduced than the present Trial.

and thairfra, as ane captiue, to Eift Nisbet; and thairfra to Beruik, quhair, but (*without*) consent of Sir Johnne Home of North Beruik, Donatour to the Gift of his Waird and Mariage, he was mareit to Jean Chirnesyde, dochter to the said Sir Patrik; committit in the moneth of November, 1615 5eiris.

PRELOCUTOURIS in defence, Mr Alexander Peiblis, Johnne Belfis, Mr Robert Fairlie, Aduocatis.

PRELOCUTOURIS in perfute, Sir George Home of Manderstoun, Sir Williame Oliphant of Newtoun.

PERSEWARIS, Sir Williame Oliphant of Newtoun, kny^t, for his hienes intreis; Sir Johnne Home of North Beruik, kny^t, as Donatour to the Waird of the said Adame French mariage, for his intreis.

The Aduocat, with Sir Johnne Home of North Beruik, kny^t, as persewaris, produces the summondis. Eftir reiding thairof, the Aduocat produces, for Sir Johnne Home of North Beruik his entreis, the Gift of the said Waird and Mariage of Adame Frenche of Thornydykis.

The Pannell, befor farder proces, desyres my lord Justice to heir Adame French of Thornydykis, presentlie in Judgement, quha is the persone allegit ravischet and tane away, to mak his awin Declaratioun of the forme and maner thairof; and thaireftir, thay fall cun to thair Defencis in the cause.—My lord Aduocat Disassentis to ony Declaratioun to be maid be the said Adame Frenche, in this matter; and desyres the pannell to cun to thair awin allegiances, quhy the fact lybellit sould nocht pas to ane Assyse.

THE Justice Ordanis the pannell to propone thair defensis aganis the lybell and relevancie thairof.

Adame Frenche of Thornydykis, being personallie present, disassentis fra this perfute; and thairupoun askit instrumentis.

It is allegit be my lord Aduocat, that the disassenting of Adame Frenche sould nocht be respectit, becaus he is naither persewar nor defender in the caus; and the Aduocat, with the persewar, haifing sufficient entreis for the King, may persew.—It is ansuerit, that my Lord Aduocatis ansuer touching the perfute, movet be his lordschip and Sir Johnne Home, nawayis can stay this young Gentilman to disassent thairfra, *sed valeat cum processu quantum valere potest*.

It is allegit be the pannell and thair prelocutouris, that Sir Johnne Home hes na intreis to persew this caus, being criminall; becaus his only intreis is as Donatour to the waird and marriage of Adame Frenche; quhilk Gift, *per se*, can geve him na intreis to persew criminallie, becaus, be the Gift of Waird, he hes nather entreis *in personam neque in rem*: *In personam*, becaus this young Gentilman, befor the intending of this caus, was past fourtene yeiris compleit, and hes electit and chosin Curatouris to him, for administratioun of his persone: *In rem*, he has na intreis, becaus howbeit it may appeir be the Gift producet, that Sir Johnne Home is Donatour to the Waird of this young Gentilman, yet, *in rei veritate, res aliter se habet*, as Sir Johnne Home will nocht deny, and as sall be maid cleir to

the Judge ; in fa far as (at) the tyme of vmq^{le} Robert French deceis, father to this young Gentilman, haifing tua father-brether¹ on lyfe, viz., James and Johnne Frenches ; James haifing ane cair of the bairnes educatioun and standing of the hous, delt for the Gift of the Waird and Mariage, to the vtilitie of the bairne ; bot, becaus he was nocht hable to dischARGE that administratioun of the bairne as become him, in respect of dyuerse trubbillis and cummoris² he come vnto, he makis chose of the said (Sir) *Johnne Home of North Beruik*, as ane trustie freind to him and the bairne, borrowis his name to the said Gift, and infertis his name thairintill ; nocht that the said Sir Johnne sould rype³ any commoditie thair of, bot vseing the said Sir Johnnes name, nocht being hable to dischARGE the office him selff. For cleiring⁴ of this, it is of verritie, that nocht-withstanding of the inserting of the said Sir Johnnes name in the Gift, the said vmq^{le} James French intromettit with the haill leving pertening to the said bairne, during his lyf tyme, keipit the said bairne in his custodie, at leist was in the custodie of his guidfchir on the mother fyde,⁵ within the place of Hardiesmylne, and that but⁶ interruption, challenge, or questioun made be the said Sir Johnne, anent the custodie of the bairne, or vplifting of the maillis⁷ and deuteis of his leveing : For forder qualificatioun of this argument, it is lykwayis of verritie, that eftir the deceis of the said vmq^{le} James Frenche, vmq^{le} Johnne Frenche, younger brother to the said James, being servet and retouret air⁸ to the said vmq^{le} James his brother, nocht only intromettit with the said vmq^{le} James his leving, bot lykwayis with the haill rentis of the said bairnes leving, *Tutorio nomine*, the said vmq^{le} Johnne being seruet and retouret Tutour to him ; quhairby it is cleir that this Gift of Waird of the said minor can gif the said Sir Johnne no intreis to persew this cause, his name being only borrowit to it, as said is. Lyk as, thair is actioun depending at the instance of the bairne and his Curatouris befor the Lordis of Seffioun aganis the said Sir Johnne for his intromissioun with the maillis and deuteis of his landis, and for transferring and translating of the Gift of the Waird in the persone of the minor, as tane to his awin behuif, and the said Sir Johnnes name only borrowit thairto. And sa, haifing nather entreis *in personam neque in rem minoris*, his Gift can geve him na intreis to persew this caus. *Secondlie*, albeit it war grantit, as it is nocht, that the Gift was tane to the behuif, utilitie, and proffeit of the said Sir Johnne, yet the Gift of the Waird can geve the said Sir Johnne na intereis to persew this caus, being ane Criminall persute, without the expres concurse, assistance, and rathabitoun of the said minor him selff, aganis quhome the Rapt lybellit is allegit to be com-

¹ Paternal uncles.² Literally *cumbers*, encumbrances, difficulties, embarrassments ; but in this instance it denotes strife, feud, &c., as the word then denoted.³ Reap.⁴ Elucidating.⁵ Maternal grandfather.⁶ Without.⁷ Rents.⁸ Served and retoured heir.

mittit; quha nocht only refuiffis to concur and affist the faid Sir Johnne; bot, be the contrair, compeiris with the defenderis, and affistis thame; affirneing all that was done be thame, to be lauchfullie done, and quhat was done to him was at his awin defyre, and be his awin speciall confent.

It is anfuerit, be my lord Aduocat, and the faid Sir Johnne Home, that the faid Sir Johnnes entreis is fufficientlie qualifeit and instructit for perfute of the actioun lybellit, feeing it is lybellit that he is Donatour to the Waird and marriage of Adame Frenche, aganis quhome the haill wrongis lybellit war committit, being our fouerane lordis frie lege; and that the custodie and keiping of minoris, quhais landis fallis in our fouerane lordis handis be reffone of Waird, properlie pertenis to the Donatour of the Waird and Mariage: Lyk as, it is expreflie qualifeit in the faid Summondis, that the faid minor was in the faid Sir Johnnes poffeffioun mony yeiris befor the tyme lybellit, furth of quhais poffeffioun it was nocht lauchfull to the defenderis nor nane of thame to mell¹ with him, in maner lybellit, nor tak him furth of his poffeffioun: Lyk as, complent being made of befor be the faid Sir Johnne, befor the Lordis of Secreit Counfell, aganis the speciall perfonis his away-takeris, viz. Williame Home and Williame Moffet, the faid Sir Johnne was ffund to be ane pairtie compliner to call for exhibitoun of the faid bairne; in quhais favour ane fentence was gevin and pronuncet, ffinding and declairing that the faidis Williame Home and Williame Moffet had committit ane verrie grit offence and ane moft pernicious and wicket preparatiue and example, in trayning and taking away the faid Adame Frenche out of the faid Toun of Hadingtoun, quhair he was placet at the fcole be the faid Sir Johnne; in refpect quhairof, the faid Sir Johnne hes indoutit rycht and intreis to perfew the actioun lybellit; and speciallie, to informe and concur with our fouerane lordis Aduocat, quha hes speciall entreis be him felff, in his hienes name, to perfew the crymes lybellit. As ffor the impertinent² difcourfe, that the richt of the Waird was tane to the behoue of the bairne be the advyfe of vmq^{le} James and Johnne Frenches his father-brether, that alledgeance is nather releveant nor instructit; and fa, na refpect aucht to be had thairto: And yit, to anfuer to the firft pairt, anent James intromiffioun, the allegeance is altogidder irrelevant; for albeit he had intromettit, that eftablifches na richt of the Waird in his perfone, bot the Donatour had fufficient intreis to perfew the intromitteris with the maillis and douteis of the Waird landis: And, to mak the matter mair manifef, James deceift within fyftene dayis efter Robert his brother: Lyk as, vmq^{le} Johnne was ane actuall feruand to the faid Sir Johnne, during his lyfityme, eftir the dait of the faid Gift. And as to the laft pairt of the fecund allegeance, beiring that the faid Adame French difaffentis fra the perfute, and concurris with the defenderis,

¹ O. Fr. *mesler*, to intermeddle; to interfere.

² Irrelevant; not pertinent.

affirmyng that all [that] was done to be done of his awin consent, it is answert, as of befor, that his disaffenting fra the persute can nocht preiudge ony of the persewaris : And as to the last pairt of the said allegiance, quhilk appeiris to be proponit aganis the intreis, it is rather affirmatioun that the said Sir Johnne hes intreis nor¹ oppositioun aganis the samyn ; and gif it fall pleis the pannell to propone it, as ane defense in the cause, thay fall haif ane direct answert ; ffor, be the proponing of that allegiance, it is grantit that the Donatour hes intreis ; and that he is Donatour, it is verifeit be the Gift producet : Bot to mak this matter cleir, it is answert directlie, that ane cryme being committit aganis pairteis quha hes intreis, the Confessioun of the pairtie offendit can nevir tak away thair intreis, nather yit the Kingis intreis efter committing of the cryme, ffor, albeit wrang had bene done to ane maior,² and the maior wald renunce the actioun, that can nawayis preiudge the Kingis Maiesteis intreis, nor na vther pairtie quha is preiudget ; as is cleir in the haill article of the Cod. L. vnica Codice *de Raptu Virginum*, et Lege *Raptores*, C. *de Episcopis et Clericis* : And to mak this matter the mair cleir, it is speciallie declairit be the Act of Parliament maid in October 1612, that the declaratioun of the persone ravischet fall nawayis preiudge the Kingis Maiestie of his intreis to persew the committer of the cryme : And to cleir this matter forder, the said Adame Frenche, eftir his away-taking, be ane Letter, all writtin and subscryuit with his awin hand, grantit and confessit that he was tane away aganis his will and vndone ; as the Letter heirwith producet beiris.

To the quhilkis it is answert be the pannell, that the allegiances proponit be thame aganis the said Sir Johnne Homes intreis standis relevant, nochtwithstanding of my Lord Aduocattis answert ; becaus the defendaris affirms constantlie, that of the Law nor Practique of Scotland, the Donatour of the Waird or Mairiage of ony persone hes na actioun criminall competent to him for ony wrang done to the minor, without the concurse of the minor quha is offendit, bot that the Gift of the Waird inferis to the Donatour only ciuile actioun, *per se* : And howbeit the keiping of the minor during the Waird pertenis to the Donatour, yit gif the minor be past xiiij yeiris, *et sic sui juris*, divertis him self willinglie out of the companie of the Donatour, passis forwardis to the electioun of his curatouris, thair is na actioun competent of the law to the Donatour, for exhibitioun and delyvering to him of the minor. Lyk as, Williame Home being summoned befor the Counsell, for exhibitioun of the said Adame Frenche, and being be Ordinance of the saidis Lordis, thaireftir, sequesterat in the handis and custodie of *James Archbyschop of Glasgow*, vpone ane Supplicatioun gevin in be the said Adame him self to the saidis Lordis, the saidis Lordis, be thair Decreit, Ordanit the said Adame to be put to libertie to pas and repas at his plesour, nocht-

¹ Rather than the contrary argument.

² A person arrived at lawful age, or majority.

withstanding of the Gift of the Waird disponit to the said Sir Johnne Home, quhais entreis could be na impediment to stay the said Adames libertie: Lyk as, conforme to the said Decreit, being put to libertie, he frelie, volunterlie, and willinglie repairit to the Place of Eist Nisbet, quhairin he hes remanit sensyne, as to ane speciall freind; and, gif neid beis, the said Adame, be his awin Declaratioun, will declair his intioun of passing to Eist Nisbet. And for instructing thair of, produces the bairnes grevis,¹ to be considerit be my lord Justice, desyreing the samyn to be red as ane speciall pairt of the proces. As to the Letter producet be my lord Aduocat, the said Adame denyis the same altogidder to be his hand writt, and thairfor na respect could be had thairto: Lyk as, the said Adame being personallie present, Judicialle declairis he can nocht wryte; and this Letter producet be my Lord Aduocat was writtin by² his knowlege in *the Guidman of Manderstones* hous, the tyme of his sequestratioun; and in case it war his hand writt, it could mak na faith in judgement, being direct be ane minor. As to the Act of Parliament producet, quhilk is in anno 1612, the alledgeance foundit thairupoun militatis nawayis in this eirand, nather is this persute foundit vpon that Act of Parliament; and quhan as my lord Aduocat foundis a persute thairupoun, it fall haif the awin ansuer.³ *Igitur*, &c.

The Aduocat, for him self, and for the partie, repeittis his former ansueris, with this additioun, that the minor being in the Donatouris possessioun of his Waird and Mariage, lyk as, he was be the space of fyve yeiris befor the Rapt lybellit, could nocht haif been tane out of his possessioun, in maner contenit in the Summondis; and the away-takeris of him aucht to be pwneist according to the desyre of the Summondis. As to the impertinent discourse, that the Waird was tane to the behuif of the bairne, thair is nathing producet to verrifie the samyn; and albeit it war verifeit, it is altogidder irrelevant, in respect of the former ansuer; and specialle, in respect that the Defenderis had na intreis, in maner lybellit, to haif mellit with the minor: And quhairas thair is mentioun maid of the electioun of his Curatouris, thair was na Curatouris chosin the tyme of the committing of the crymes lybellit, quhilk was done in November 1615, the Curatouris being alledgedet chosin in Julij thaireftir, 1616. And quhair mentioun is maid of the bairnes libertie and sequestratioun, that is nawayis pertinent to this purpois, in respect of the lybell. *Igitur*, &c.

It is allegit be the pannel, that the electioun of the Curatouris be Adame Frenche in July 1616, is sufficient, nochtwithstanding of his away-taking of befor; and that be resson that howbeit the Curatouris was nocht chosin befor

¹ Probably *grievances*. There is marked on the margin of the Record, 'Thir grevis tane vp and keipit be my lord Justice.' ² Without; beside; contrary to. ³ Its own, *i. e.* a special answer to the pursuit so founded.

the allegit Rapt, yit he was maior befor the allegit Rapt, past fourtene yeiris of age, &c. *Igitur*, &c.—It is anſuerit thairto be my lord Aduocat and the perfe-war, that na reſpect aucht to be had, quhiddir he was past xiiij yeiris of age the tyme of the committing of the crymes or nocht, quha being at that tyme in the cuſtodie and keiping of the Donatour to the Waird, and na curatouris choſin to him, the defenderis had na intres to haif mellit with him, as is lybellit. And quhair it is allegit, that the Miſſiue uſet and producet for the ſaid Adame, aucht nocht to be reſpectit, in reſpect of his minoritie; it is anſuerit, that the ſamyn aucht to be reſpectit, being all writtin and ſubſcryuit with his awin hand: And to convert that argument aganis the defenderis, na reſpect aucht to be had to his Declaratioun, nather be word or writ this day, in reſpect of his minoritie. As to the Teſtimoniall producet for his age, na reſpect aucht to be had thairto, for the reſſones aboue writtin, ſpeciallie, in reſpect he was baptizet the xij of November, 1601, and was tane away in November 1615, ſua that it is nocht conſtant¹ thairby, quhiddir he was past xiiij yeiris or nocht the tyme of the Rapt lybellit. *Igitur*, &c.

It is allegit for the Defenderis, that the Dittay is nawayis relevant to infer aganis thame any criminall perfute, nather can thay pas to the knowlege of ane Inqueiſt thairfoir; becaus the fact contenit in the Dittay, it is *vel Raptus vel Plagium*: *Raptus*, of the Law, it is nocht; becaus *raptus et raptura* of the Law is only concerning Virginis, and nocht more. *Cap. de Raptu Virginum, toto titulo*:—Bot quhiddir it be *vel Raptura vel Plagium*, yit the Dittay is nocht relevant, becaus *ad crimen Plagii vel Raptura, oportet accedat et interveniat vis et violentia*: *Oportet de jure ut deportatur de loco in locum, clandestinè, violenter*, and that his freindis and kineſmen be debarrit fra haifing acceſs to him, quhairby he is depriyvet of the libertie of ane frie ledge: Bot ſa it is, that nane of thir perticuleris, without the quhilkis the Dittay can nocht be relevant, is ſet down in this Dittay; ffor firſt, thair is no violence nor violent fact ſet down thairin; it is nocht lybellit that he was violentlie, quyetlic, and clandeſtanlie tranſpoirtit fra place to place; or that he was detenit, *quafi in carcere*; or that he was debarrit fra his freindis, or fra haifing acceſs to his freindis, or thay to him; bot be the contrair, it is affirmet in the Dittay, that he frelie, volunterlie, and willinglic past with Williame Home, his mother-brother,² out of the Houſe of Mr Williame Bowie, quhilk inferris a frie away-cuming, being with his mother-brother, and nerreſt of his kyn, haifing na kyn of the father ſyde knawin to him: And ſa, the Dittay is altogidder irrelevant. As to that pairt of the Dittay, beiring that the remanent defenderis are airt and pairt thairof, thay can nocht pas to ane Aſſyſe vpone that point of the Dittay; becaus, gif thair be nocht

¹ Clear; apparent.

² Maternal uncle.

ane cryme committit be the principallis, nor a relevant cryme fet down aganist thame, the perfones can nocht be alledgit to be airt and pairt thairrof; and albeit it war relevant for the principallis, it is nawayis relevant aganis the remanent perfones, as airt and pairt; becaus airt and pairt, of the Law, is, *qui prodet vel auxilium vel consilium; auxilium, vel ante factum, vel in facto, vel post factum*: Thair is nather *auxilium* nor *consilium* relevantlie lybellit aganis thir defenderis, *neque ante factum, in facto, vel post factum*; ffor thair is nathing lybellit aganis thame, bot that he was first tranſpourtit to Rymmiltone-law, and thaireftir to Eift Nisbet; and that thaireftir he was mareit to Jeane Chirneſyde, quhilk is na qualificatioun of violence *cum matrimonia ſunt libera de jure*; and the mariage of ane minor, eftir his compleit age of xiiij yeiris, quha hes *conſenſum* of the Law, can nocht be comptit ony violent fact, becaus it proceidis of his awin propper fact; ſpeciallie, ſeing the mariage proceidit vpone the Proclamatioun of his bands, publictlie, in the paroche kirk, quhilk takis away the grund of the argument of violence vſet aganis him. *Igitur, &c.*

It is anſuerit be the perſewaris, for verifeing of thair Summondis, and haill memberis thairrof, that the ſamyn is verrie relevantlie conſaует, and aggreis with the Lawis and practique of the realme of Scotland, Ciuile, and Commoun Law, and Lawis of all Nationis maiſt ciuile, Ingland and ffrance; and thir anſueris ar proponit be him to verifie all the memberis of the propoſitioun contenit in the Summondis, and to elyde¹ the exceptiones proponit be the pannell, baith for the principallis, and thais that ar callit for airt and pairt: And as to the firſt member of the propoſitioun, the perſewaris alledges, that the ſamyn is ſufficiētlie verifeit be the haill article of the Cod. L. nono, Tit. 20. ad Legem Fabiam *de Plagiariis*; lyk as, be the Lawis and practique of this realme, the taking of ony frie perfone is capitall, and ſumtyme thoct to be treſſonable: It was fund to be capitall aganis *George Meldrum of Dumbrek*, for taking of *Mr Alexander Gibſone*; lyk as, he was perſewit and pwneift to the death thairfoir: *The Marquis of Huntlie*, and *the Erles of Craufurd* and *Bothuell*, war perſewit criminallie, for the taking of vni^q^{le} *Thomas Maiſter of Glammes*, and put to the knawledge of ane Inqueiſt. As concerning the Ravifcheing, that pairt is verifeit to be capitall, be the Act of Parliament maid in the dayis of King James the Fyft, of worthie memorie, in the moneth of Marche, 1540, cap. 118; and ſielyk, be the foirnameit Act, in October, 1612; be the Ciuile Law, the ſame member anent the Ravifcheing is capitale, toto Titulo et Lege vnica *de Raptu Virginum* et Lege *Raptores*, Codice *de Episcopis et Clericis*: And albeit the ſaidis Lawis chieflie makis mentioun of violence committit aganſt Wemen, yit the Gloſs and haill Jurifconſultis reſolues, that the ſame lawis hes place quhair ane man is ravifched:

¹ Cut off; redargue. Lat. *elidere*.

And albeit na violence war lybellit, yit thair is sufficient circumstances lybellit to infer the violence; beiring directlie, that quhan the said *Adame Frenche* desyret to be bak agane to Hadingtoun, the principall persones defenderis, at the leif *Williame Home, Alexander Cranstoun of Moriestoun, and Williame Moffet*, of the speciall causing, counfalling, and devyseing of the haille persones contenit in the Summondis, had the said Adame in thair power, and tauld to him planelie that he sould nocht returne, bot that it behovet him to go to Eist Nisbet, to marie the Lairdis dochter; and this was done be thame, eftir that the said Adame was tane and apprehendit be the said *Williame Home*, (and) was craftillie movet, persuaudit, and intyset to pas with thame furth of Hadingtoun, of intentioun to haif visseit *Margaret Haitlie*, his guidame, and sifteris, albeit that was nocht thair intentioun; bot that followit quhilk thay proponit to thame selffis frome the begynning, to keip him in thair handis quhill he war mareit with *Eijl Nisbetis* dochter: Lyk as, he was quyetlie and secreitlie convoyit and cayreit fra Hadingtoun to Rymmiltone-law, in the Merse, than the duelling-hous of the said Alexander Cranstoun of Moriestoune, and thairfra, be the said *Williame Home, Alexander Cranstoun, Johnne Cranstoun, and Williame Moffet*, to the Place of Eist Nisbet; and thairfra, furth of the realme of Scotland, to the Toun of Benuik in England, quhair he was secreitlie mareit *clandestinè*: Quhilk anfuere is sufficient to infer the conclusioun of the lybell, in respect of the circumstances contenit in the Dittay: And yit to mak the Dittay relevant, of the Law, albeit thair war na violence lybellit, quhan pairteis are seducet and intyset, the cryme remanis capitall, as is contenit in the lybell; and alleges Godfredus, ad dictam Legem *Raptores*, et Bald ibidem; Farinacius de *Delictis carnis*, quest. 146, Tit. 16, numero 40; Cheffa. de *consuetudine Burgund.* Rub. 1, pag. 57; Salicotus ad dictam Legem vnicam, Cod. de *Raptu Virginum*, quhais woirdis ar thir schortlie, ‘*quod persuasio dolosa, in talibus, plus est quam violenta tractio.*’ Forder, be ane expres Statute maide be Henrie the Third of France, it is ordanit, that quhosoever fall be fund to haif subornet or intyset ane chyld, minor, and within xxv yeiris of age, without consent of thair parentis, or vtheris in quhais custodie thay ar, salbe pwneist to the daithe, without ony pardoun. This Law was set down, *per expressum*, in the grit Code of the said King Henrie, Lib. 60, Tit. 2°, Stat. 8°. Lyk as, in the sevint buik of Papon. de *crimine Raptus*, it is expresse ffund and declairit, that ane Woman, for seduceing or intyfeing of ane young man to marie hir dochter *clandestinè*, was condampnit to the daithe. Lyk as, be the Lawis of England, this cryme is pwneist with fyve yeiris imprissonement, and ane grit fyne at the Princes will; and this Law was set down quhair ony persone is ravischet fra thair parentis, tutouris, or guardianis: And of this Law mentioun is maid in the 555 leif of the Registar of the Lawis

of England. Julius Clarus, § *Raptus*, num. 6, ait, ‘*Raptum viri etiam puniri pena Raptus, ac si Virgo rapta esset.*’ Be the Lawis of the Maiestie of Scotland, *Quon. Attach.* cap. 95, *de Raptu heredis Maritagium debentis, et ejus pena*, &c. Be the self same Law of the Maiestie, in findrie pairtis, Ravisching of Men or Wemen, whois Mariage pertenis to the Prince, is appointit to be criminallie persewit befor the Justice. And last, Ravischeing is sa odious ane cryme in Scotland, that the samyn is exceptit furth of Remissiones, as ane cryme maist haynous and detestable.—In respect of the quhilkis alledgeances, proponit for verificatioun of the propositioun contenit in the Summondis, the Dittay is relevant aganis the haille persones on pannell. And that pairt of the lybell, ‘airt and pairt,’ is verrie relevant aganis all persones, and speciallie appointit to be lybellit be Act of Parliament; and the Law is verrie expres in that, that all the persones that concurris and assistis the fact quhilk is capitall, ar all culpable as the committeris thair of: Bot in this caice, it is lybellit expresse, that Williame Home and William Moffet intyset and tranet¹ the said Adame furth of Hadingtoun, and convoyit him to Rymmiltounelaw, quhair he was ressaute be the said Alexander Cranstoun; quhilk Alexander and Johnne Cranstoun convoyit him thairfra to Eist Nisbet, and thairfra altogidder to Beruik, quhan he was mareit *clandestinè*, as said is, and ressaute be the said *Laird of Eist Nisbet*, and keipit be him quhill he mareit with his dochter, purpoisslie done to preiudge the said Sir Johnne Home of the double availl of his Mariage; quhilk makis the haille pannell nocht only to be assisteris of the fact, bot airt and pairt, and direct doaris thair of. And to verifie that he was seducet, intyset, and cayreit away aganis his will, repeittis the foirsaid Letter, all writtin and subscryuit with his awin hand; and the Decreit gevin to the Secreit Counfall, finding ane wrang done, be the away-taking of him. And thir argumentis ar proponit, nocht only to verifie the propositioun of the Summondis, bot also to clyde the exceptiones proponit be the persones on pannell aganis the relevancy of the Dittay.

To the quhilk it is ANSWERIT be the persones on pannell and thair prelocutouris, that the pannellis allegiance proponit aganis the irrelevancie of the Dittay standis relevant, nochtwithstanding of all the arguments proponit be my lord Aduocat aganis the samyn: ffor, as to the Lawis Ciuile, French Lawis, Inglis (Lawis, and) Municipall Lawis of this realme, thay ar verrie pertinentlie citit be my lord Aduocat, for confirmatioun of the propositioun of the Dittay, and to infer the conclusioun thair of, gif the subsumptioun war relevant, quhilk is *factum*; ffor it is nocht contravertit with² my lord Advocat, that *Raptus Virginis*, Ravischeing of wemen, *vel crimen Plagij*, as the taking of his Maiesteis frie lege, is capi-

¹ Trained; led away craftily, or by stratagem.
doctrin laid down by the Lord Advocate.

² It is not controverted, even according to the

tall of the Law, and may be criminallie perfewit at his Maiefteis Aduocattis instance; bot the queftioun in this judgement¹ is, quhidder gif this pannell haif committit ony of thir crymes, at the leift quhidder the famyn be relevantlie lybellit to infer the cryme cravet; ffor his lordfchip will nocht deny, that of the Law, to aither of thir crymes thair aucht to intervene *vim et violentiam*, and the remanent circumftances allegit be me ofbefoir, viz. *Abductio per violentiam*, *Deportatio de loco in locum clandestinè*, *Seclufio parentum*, quhairby nather of thame fould haif accefs to the pairtie ravifchet, and detenit, and withaldin fra thair kyn and freindis, *quafi et tanquam in carcere*; fua that without thir circumftances concur in this caice, it can nather be *Raptus* nor *Plagium*; and consequentlie, thay can nocht pas to the knowlege of ane Affyfe thairfoir. As to the instances citet be my lord Aduocat, betuix *Dumbrek* and *Mr Alex^r Gibfone*, nixt betuix vniq^{le} *Thomas Maifter of Glammis* and *the Erles of Huntlie, Craufurd*, and *Bothuell*, thay militat nathing in this caice; ffor as to *Dumbrek*, he expreflie committit *crimen Plagii*, in taking of the Kingis Maiefteis frie lege, quyetlie and clandestinlie, by² all his freindis knowlege, be plane violence and force, being accompaneit with ten or tuelf perfones in hofteill and weirfair maner, with wappones prohibeit to be borne or worne, tranfpoirting of him from place to place vnder nycht, debarring his freindis to haif acces to him, and be carieing him to the Caftell of Harbottill, in England; fua that the pwneifchment inflictit vpone him was dew, accoirding³ to the fact. As to the fecund instance, anent *the Maifter of Glames*, it lykwayis far les militatis in this caice, ffor it is not-tour, as my lord Juftice, his Affeffouris,⁴ and my lord Aduocat knawis rycht weill, that *the Erles of Huntlie, Craufurd*, and *Bothuell*, being banded againft the Kingis Maiefteis authoritie, deprehendit *the faid Maifter of Glammis*, in the Kingis Maiefteis high way, chaiffit him to the Hous of Kirkhill, and pat ffyre thairto, quhillk inferris *crimen Plagij* of the Law, and ane gritter puneifchment: And as to that part of the Dittay, beiring that the faid Adame was intyfet and feducet, that is nawayis relevant to infer ane cryme, ffor ffraud is nocht capitale, of⁵ the Municipall Law of this realme, nor yit accoirding to⁶ the practique of the fame: And as to the Lawis citet to infer the famyn to be *crimen capitale*, and speciallie the Law of the Maieftie, *Quon. Attach.*, I oppone⁷ the daylie cuftome of this Judgement, the Municipall Law of this realme, and speciallie the Act of Parliament in anno 1612, ffor it is expreflie fet down in the Dittay, that the faid Adame Frenche come with the faid William Home out of the faid Mr William Boweis hous, the famyn can infer na Rapt; nocht only

¹ Court; tribunal. ² Without; against; beside. ³ Corresponding; conformable. ⁴ It was the uniform custom, in all cases of difficulty and interest, for several Members of the Privy Council to sit in judgment with the Justice, as Assessors. Their names are only occasionally inserted in the Record in remarkable Cases. ⁵ According to. ⁶ Corresponding with. ⁷ Oppose.

for the argumentis, that he was, *sui juris*, past the age of xiiij yeiris, bot his being in companie with his kynsmen, can nocht infer ane Rapt, speciallie, quhair he is nocht detenit *per vim nec violentiam* fra the presens of his freindis. And quhair as, my lord Aduocat affirmes the Mariage to haif bene clandestine, and sa, nocht lauchfull, the contrair is affirmit—it was nocht clandestine; becaus thair preceidit Proclamatioun of Bandis,¹ the mariage was maid publiclie in the paroch Kirk, within the town quhair the parentis of the Gentilwoman had residence, off the speciall consent and assent of the said Adame; the said Williame Home being present at the time of the geving of his consent, and in companie with him, being his mother-brother. And sua, thair being nathing qualifeit in the subsumptioun of the Dittay to infer ony violence, the pannell can nocht pas to the knowlege of ane Assyse thairfoir: ffor as to thais wordis fet down in the Dittay, that thai wald nocht suffer him to pas bak agane, thair is nathing producet to instruct that point of the Dittay, nor na pairt thairof, tuicheing the allegit fact; ffor, be the Cowmone Law and diuerse Doctouris, sic as Julius Clarus, Baldus, Hostiensis, and remanent Doctouris treittand *de crimine Plagij vel Raptu Virginis*, thay conclud the samyn nawayis to be ane cryme quhairvpone ony pairtie may be accuset criminallie, except thair concur violence and violent deidis to that effect. This is cleir in the Cowmone Law, Digest. *de Incendio, Rapina, et Naufragio*, &c.; sua that the haill Doctouris and Cowmone Law concludis, that *nunquam sit Raptus sine vi et violentia. Igitur*, &c.

The Persewaris repeatit thair former ansueris, with the haill argumentis proponit for verificatioun of the propositioun of the Summondis: and lykwayis repeatit the Summondis, and haill pairtis thairof, quhillkis ar relevantlie lybellit, as ane direct ansuer to the last argument proponit. And as to the consent of the said Adame, ansueris as ofbefoir, that ane fact capitall being committit, the pairtie aganis quhome the samyn is done may mak na² confessioun nor declaratioun to the prejudice ather of the Kingis Maiestie, or the pairtie interesseit.³ *Igitur*, &c.—To the quhilk it is ansuerit, that the pannell declairis, that as yet thai haif proponit na alledgeance vpone ony contrair Confessioun of the pairtie; bot gif ony sic allegeances he hes to propone, referues the samyn to be proponit *suo loco*: And thairupoun askit instrumentis.

THE JUSTICE continewis Interlocutour vpone the allegeances foirfaidis, and ansueris maid thairto, to the morne, the nynt of November instant. The pairteis and Assyse wairnit, *apud Acta*: And Ordanet the pannell to find Cautioun for thair compeirance the morne, to the effect foirfaid.

The Laird of Eist Nisbet elder, become fouertie for the entrie of Alexander Cranstoun of Burnecastell, vnder the panes contenit in the Actis of Parliament.

¹ Bans.² Is not entitled to make any confession, &c.³ Interested.

—The said Alexander become cautionne for the entrie of Eist Nisbet, Johnne Cranstoun, Williame Home, and Williame Moffet, the morne, vnder the panes, &c.

Nov. 9.—THE JUSTICE, befor Interloquitour to be pronouncet be him in the matter, Ordanit the perfonen on pannell, and fiklyk the said *Sir Johnne Home of North Beruik, knyght*, perfewar, to find caution for keiping of his Maiesteis peace, in nocht trubilling and molesting of vtheris,¹ by way of deid, in thair bodeyis, landis, or guidis, vtherwayis nor by ordour of Law and justice, under the panes following, viz. The said *Laird of Eist Nisbet*, the said *Sir Johnne Home* of North Beruik, and *Alexander Cranstoun*, ilk ane of thame vnder the pane of fyve thowseand merkis; and the saidis *Johnne Cranstoun* and *Williame Home* vnder the pane of I^m (1000) merkis, for ather² of thame.

James Faufyde, younger of that Ilk, become plege and fouertie for Sir Patrik Chirnesfyde; Johnne, Maister of Cranstoun, for Alex^r Cranstoun; Alexander Chirnesfyde, younger of Eist Nisbet, for Johnne Cranstoun; and the said Alexander Cranstoun of Burne Castell, for Williame Home, that thai fall keip his Maiesteis peace, and that Sir Johnne Home of North Beruik, kny^t, fall be harmles and skaithles of thame in his body, landis, possessiones, and guidis, and onnawayis³ fall be molestit nor trubillit be thame or ony of thame thairintill, nor be na vtheris of thair causing, sending, hounding out, command, reffet, assistance, or ratihabitoun, quhome thay may stop or lat,⁴ directlie nor indirectlie, vtherwayis nor be ordour of Law and Justice, &c.

Sir George Home of Manderstoun, Johnne Home, younger of Aytoun, and David Home of Wedderburne, younger, become pleges and fouerteis, coniunctlie and feuerallie, for Sir Johnne Home of Northberuik, that Sir Patrik Chirnesfyde, &c. fall be harmeles and skaithles, &c.⁵

(Nov. 20.)—MY LORD ADUOCAT, befor Interloquitour, declairis he will nocht insift any forder at this present, in persute of the perfonen on pannell, for the crymes lybellit: And in respect of the haynousnes of the fact, and evill preparatiue⁶ and consequence quhilk may follow, desyres that caution may be tane of the defenderis for thair entrie, vpone a fyftene dayis wairning, to abyde tryell for the samyn, &c.—It is allegit be the pannell and thair prelocoutouris, that in respect of the allegeances proponit, alsweill dilatour as peremptour in this cause, and of my Lord Aduocattis answaris maid thairto, quhilk lyis at Interloquitour, his lordschip, as perfewer, can nocht be hard to refeill⁷ fra this persute; nather can the pannell be astricted to find caution, seing thay ar willing, vpoun my lord Justice Interlocutour, to defend thame felffis, as accoordis of the Law: And in all humilitie abydis his lordschipis Interloquitour thairupoune.

¹ Each other.

² Each.

³ In nowise.

⁴ Hinder.

⁵ In the same terms as above.

⁶ Precedent; example.

⁷ Resile; draw back.

Mr Alex^r Peiblis, as prelocutour for Adame Frenche, personallie present, produces ane Supplicatioun to my lord Justice, for his lordschipis informatioun in this caus, anent the said Adames passing away sflurth of Hadingtoun with the pannell, and that the samyn was of his awin frie will and consent; and desyret the samyn to be red, and to remane in proces; and takis instrumentis vpon the productioun thairof.—It is allegit be my lord Aduocat, that eftir his Declaratioun aboue writtin, that he desistis fra this persute, the persones on pannell, and far les the said Adame Frenche, quha is nawayis convenit, ather as persewar or defender in this matter, can be sufferit to produce ony informatioun or vther allegiance in this cause; nather aucht my lord Justice to admit the productioun thairof, eftir the Declaratour foirsaid.

The pannell desyret the Supplicatioun foirsaid to be red, befor my Lord Justice geve any Interloquitour, quhidder my lord Aduocat may reseill *pure et simpliciter, vel pro loco et tempore*.—The Supplicatioun gevin vp agane to the pannell, at command of my lord Justice.

THE JUSTICE findis that my lord Aduocat may verrie weill desist fra this persute and tak vp his proces, seing he is persewar of the caus; and that, nocht-withstanding of the alledgeance maid be the pannell in the contrair.

The pannell takis instrumentis of the productioun of the former Supplicatioun be Adame Frenche, and that the said Adame Frenche is personallie present, reddie to declair, baith be woird and writ, that he past away with his Mother-brother of his awin frie will and consent.—My lord Aduocat, in the contrair, sayis the samyn sould nocht be admittit.

The parties find caution 'that thai fall compeir befor the Justice, or his deputis, the thrid day of pe nixt Justice-air of the Scherefdome quhair thai duell ["Beruik"], or soner vpon xv dayis wairning, to vnderly the law for the crymes aboue specifit; vnder the panes contenit in the Actis of Parliament.'

Slaughter.

Nov. 13.—ROBERT ROBERTSOUNE, seruitour to James Fawfyde, younger of that Ilk.

Dilaitit of airt and pairt of the crewall Slauchter of vmq^{le} Johnne Faufyde, fervand also to the said James Faufyde, be streking him in the bellie with ane knyfe, within the barne of Faufyde, vpon the tent day of November instant; quhairof, vpon the tuelf day of this instant moneth, he deceissit.

PERSEWAR, James Faufyde, Younger of that Ilk, as maister.

The pannell Confessis the cryme, and craves Godis and the pairteis pardoun, and mercie for the samyn.

VERDICT. The Affyse, all in ane voce, be the mouthe of Johnne Hall in Prestoun, chancellor, fand the said Robert to be Culpable and conuict of the said crewall Slauchter.—SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair his heid to be strukin frome his body; and all his moveabill guidis to be escheit, &c.

Falsset—Perjury.

Dec. 20.—ALEXANDER CUIK, Notter, Schereff clerk of Beruik.

Dilaittit of Falsset, committit be him in his office of Notarie, in geving out tua feuerall extractis of ane Seasing, of tua feuerall daittis: And of Periurie, eftir he was solempnelie suorne, in presens of the Lordis, to declair the veritie in the premissis.

DITTAY against the Pannell.

FORSAMEKILL AS, it is expresse provydit, statute, and ordanit, be dyuerse Actis of Parliament, maid aganis false Notteris, and false periuret Witnessis, that gif ony Notter committis falsset, and beis convict and fund giltie pair of, (he) fall be pwneist to the daithe: And siclyk, quhair ony Witnes depones falslie, fall lykwayis be pwneist, be pearceing of pair tungis, and escheiting of all pair moveabill guidis; and forder pwneischment to be inflictit in the persone of pe saidis fals Witnesses, at the sicht of and discretion of pe Judge, accoirding to the qualitie of pe fact: As pe saidis Lawis and Actis of Parliament in thame selfis proportis. Nochtwithstanding quhair of, it is of veritie that pe said *Alexander Cuik*, being imployit as Notter be *Johnne Home of Slegden* for geving Seasing to him of pe Landis of Eister Pleulandis, gisset and disponit to him be our Souerane lord, as vaikand¹ in his Maiesteis handis be pe fforfaltour of vmq^{le} *Frances Erle Bothuell*; and that, conforme to ane Precept direct furth of pe Chancellarie to Adame Cokburne, Schereff depute of pe Scherefdome of Beruik for pe tyme, vnder pe Quarter Seill, for geving Seasing to pe said Johnne Home pair of; and to extract and draw furth to him ane Instrument pairupoun; the said Alexander maist falslie and erroneously, for his awin gane and lucre, extractit out of his Prothogoll² tua feuerall Extractis of pe foirsaidis Instrumentis of Seasing, of tua dyuerse daittis, the ane of pe dait pe xxij of Februar 1592, and the vper in anno 1593: As pe saidis tua Extractis producet, vnder pe saidis Alexanderis subscription, beiris. Lyk as, in regaird of pe said fals Extract of pe foirsaid Seasing, ane action of Improbatioun being intentit, and as zit depending befor pe Lordis of Sessioun, at pe instance of his Maiesteis Aduocat, and *Walter, Lord of Balcluch*, as heritour of pe Lordschip and barrony of Haillis, quhair of pe saidis landis of Eister Pleulandis ar pairt and pertinent, and lykwayis at pe instance of *Alexander Haultie*, burges of Ed^l, as takisman pair of, aganis pe said *Johnne Home*, for improving of pe foirsaid Instrument of Seasing, extractit be pe said *Alexander Cuik*, and gevin to pe said Johnne Home of the saidis Landis; and pe said Alexander being dyuerse tymes summond in pe said action of Improbatioun, to haif gevin Testimonie and declaratioun pairanent; and, in end, compeirand befor pe saidis Lordis, vpone the tuelf day of December instant, and being examinat in pair lordschipis haill presens, anent pe trew dait of pe foirsaid Instrument of Seasing, and being solempnelie suorne to declair pe veritie pairin, the said *Alexander Cuik* than affirmet, constantlie, that pe trew dait of pe said Seasing was vpone pe xxij day of Februar, 1591, to the quhilk he was Notter; and abaid at pe Extract of pe Instrument gevin furth be him to pe said Johnne Home pairupoun; and pairwith declairit that pe vther Extract of pe same Seasing, drawin furth be him to *Alexander Haultie*, beiring dait pe xxij of Februar, 1^m.Vc.

¹ Lat. *vacare*. Fr. *vaquer*.

² Protocol-book—an official Register ordained to be kept by every Notary.

fourcoir threttene, was ffalfe; AND pe said Alex^r being paireftir, vpone the xvij and xix dayis of pis instant moneth, re-examinat, in pe saidis Lordis prefens, and folempnelie fuorne to declair pe verritie, concerning pe dait of pe saidis tua Extractis, he vareit fra his former Depositiones, maist impudentlie: Lyk as, his Prothogoll buik was viciat be him, in pe dait foirfaid, scoiring out ‘ primo,’ and putting in ‘ tertio;’ and pairefter scoiring furth ‘ tertio,’ and wryting agane ‘ primo.’ Quhairin he hes declairit him selff to be ane ffals and infamous Notter; and be his contrair Depositiones, maid in his examination, to be ane manifest ffals and menfuorne Witnes: Lyk as, pe saidis Lordis of Counfell, be pair Decreit, gevin vpone his tryell and Examination, hes fund pe said Alex^r to be ane ffals Notter and manifest Periuret Witnes: As the Extract pairof, vnder pe subfcription of *my Lord Clerk of Register*, daitit pe xix day of pis instant, togidder with his Depositiones, maid in prefens of pe saidis Lordis, beiris. LYK AS, for verifeing of his ffalset abone writtin, pair was ane Band maid be him to the said *Alexander Haitlie*, quhairin he obleist him selff to stand and abyde at the Instrumēt extractit be him, daitit pe 23 of Februar, 1593, he procureing his Maiesteis Remiffioun for pe samyn. FOR pe quiblk ffalset and Periurie, committit be pe said Alexander, he aucht and fould be pwneift to pe daith, in example of vtheris.

ASSISA.

James Levingstoun of Jerisfwoid,	Jo ⁿ Keir, mercheand burges, Ed ^r ,	Thomas Mulliekyn, mercheand
George Logane of Bonytoun,	Patrik Somervell, mercheand	burgess of Edinburghe,
James Nasmyth of Possfo,	burgess thair,	James Halyburtoun, mercheand
Joseph Douglas of Pompharftoun,	Robert Halyburtoun, mercheand	burgess thair,
Johnne Gairdin, merchand burges	burgess thair,	Jo ⁿ Mitchelhill, mercheand burges
of Edinburghe,	Jo ⁿ Keir, skipper, burges thair,	thair,
James Douglas in Lugtoun,	Johnne Reid, indueller in Leyth,	Rob. Moffett, merch ^d burges thair.

The Aduocat takis instrumentis of the sweiring of the Assyse: And for verifeing of the Dittay, producet the tua Instrumentis of Seasing, vnder the pannellis subfcription, baith to ane effect, of dyuerse daittis: Producet lykwayis, the pannellis feuerall Missiue Letteris, direct to *Alexander Haitlie*, beirand, that the Seasing extractit to him, of the dait the xxij of Februar, I^m.V^c. fourfcoir threttene, was the trew Extract, and that he wald abyde thairat: Producet also, dyuerse Letteris, writtin be the pannell to *Williame Ker*, beirand that the Seasing extractit to him, of the dait the xxij of Februar I^m.V^c. fourfcoir ellevin, was the trew Extract, and that he wald abyde thairat: And siclyk, producet ane Letter, direct be him to the Lordis of Sessiou, being feik for the tyme, all writtin and subseryuit with his hand, testefeing the said Extract gevin to the said *Williame Ker*, daitit in anno 1591, to be the only trew Extract: Producet also, the pannellis Depositiones, maid be him in prefens of the Lordis, beiring the Confessioun of the Extract of the Seasing in anno 1591, to be the trew Extract, and the vther, of the dait 1593, to be ffals: And vpone his Re-examination, beiring the Seasing gevin in anno 1593 to be trew, and the vther in anno 1591 to be ffals: Togidder also with his Prothogoll-buik, also producet, quhair it is twyse mendit in the dait of the said Seasing. And last, producet the Lordis Decreit, fiinding the pannell to be ane ffalfe Notter, and ane manifest

periuret Witnefs. And vpon the production thair of, askit instrumentis ; as also vpon the pannellis Judiciall Confessioun of the said ffalset.

Quhilk crymes he Confessit, judiciallie, in thair presens and audience, to be of verritie ; and cravet God mercie for the samyn.

VERDICT. The Assyse, all in ane voce, be the mouth and declaratioun of the said George Logane of Bonytoun, chancellor, ffand, pronuncet, and declairit the said Alexander Cuik to be ffylit, culpable, and convict of the saidis crymes, spcifeit in his Dittay.—SENTENCE. To be tane to the Mercat-croce of Ed^r, and thair, as ane ffalfe Notter and Periuret Witnes, to be Hangit vpon ane gibbet, quhill he be deid ; and all his moveabill guidis to be escheit, &c.

[*Sir Williame Heart of Prestoun, Justice-Depute.*

ASSESSOURIS TO THE JUSTICE, nominat be the Lordis of Secreit Counsell, conforme to thair lordschip Actis of Counsell, daitit the xx of Februar, 1617.

Sir Richard Cokburne of Clerkingtoun, kny ^t ;	Sir Alexander Drummond of Meidhope, kny ^t ;
Lord Previe feill ;	Sir Andro Hammiltoun of Reidhous, kny ^t ; and
Sir Williame Levingstoun of Kilfythe, kny ^t ;	Sir James Skene of Curriehill, kny ^t . ¹]

Usurping his Majesty's Authority—Murder under Colour of Law.

Feb. 26, 1617.—GEORGE GORDOUN of Geicht.

Dilaitit of Vfurpation of our fouerane lordis autoritie, in the violent and vnlauchfull taking of vmq^{le} Frances Hay, sone to vmq^{le} George Hay of Ardlethame, ffurth of the Place of Logyruif, pertening to Williame Hay, ffear of Brunthillis, his brother-in-law, vpon the xvij day of December, 1615 yeiris ; bringing him as ane captiue and prissoner to the burgh of Aberdene ; keiping and detening him in captiuitie, in a priuat hous or ludgeing of the said Laird of Geicht, within the Gallowgait, callit ' the Bony wyfe's Inn,' for the space of ffourtie aucht houris, or thairby, &c.²

PERSEWARIS, Sir Williame Oliphant of Newtoun, kny^t, Aduocat to our fouerane lord, for his Maiesteis intreis ; Mariorie Keith, as mother to the said vmq^{le} Frances Hay.

PRELOCUTOURIS in defence, The Laird of Clwny, (Alexander Gordoun,) the Laird of Strathdoun, Mr Thomas Nicolfone, elder, Mr Alexander Peibles, Mr Robert Fairlie, Aduocattis.

The JUSTICE and ASSESSOURIS, with the advyse of ather partie, alfwyll persewar as defenderis, continewis this dyet to Fryday nixt, the last of this instant. The persones of Assyse wairnet *apud Acta* ; ilk persone vnder the pane of thre hundreth merkis.

Alexander Gordoun of Clwny become fouertie for the entrie of the said Laird of Geicht, &c., vnder the pane of ffyve thowfeand merkis money.

¹ All ordinary Lords of Session, with the exception of Sir Alexander Drummond, who was an Extraordinary Lord. ² See Aug. 28, 1616, where the Dittay is inserted. The great importance of this remarkable Case induces the Editor to preserve all the useful information which is to be gathered from the Records.

[*Sir Willame Heart and Mr Alexander Coluile, Justice-Deputes.*]

PERSEWARIS, Sir Willame Oliphant of Newtoun, kny^t; Mariorie Keith, as mother; George Hay, as brother to the defunct; Willame Hay, ffear of Brunthillis, George Hay, his brother.

PRELOCUTOURIS in perfute and fortificatioun thair of, Frances Erle of Errole, Laurence lord Oliphant, My Lord Jester, Alexander Keith of Ludquharne.

PRELOCUTOURIS in defence, George Marqueis of Huntlie, My lord of Eglington, My lord Viscount of Lauderdaill, My lord Ochiltrie, Mr Thomas Nicolfoune, and Mr Alexander Peiblis.

Feb. 28.—THE lord Aduocat producet his Maiesteis WARRANT, anent the perfute of the pannell for the crymes contenit in the Summondis, daitit at Quhytehall, the 17 of ffebruare instant; and desyret the samyn to remane in proces.

Eftir reiding of the Dittay, it is allegit be the pannell and his prelocutouris, that thair is dyuerse substantiall heidis contenit thairintill, quhilkis ar nawayis insert in the coppie gevin to thame be the Messinger executour of the Summondis; and producet the coppie, subscryuit be the Messinger, for verificatioun thair of: And in respect that na autentik coppie is delyuerit, desyres ane continuatioun of this dyet to the morne, to the effect thai may be advyset with the Dittay, and vpone thair Defenffis to be proponit be thame aganis the samyn.—It is ansuerit be my lord Aduocat, that the allegiance foirfaid aucht to be repellit, and na continuatioun fould be grantit, in respect of the Summondis and Executiones thair of, producet, beiring ane autentik coppie to be delyuerit to the pannell: And forder, thair was na necessitie to charge the pannell, or to geve him ane coppie of the Summondis, bot only to his cautioneris, quha become fouertie for his entrie to vnderly the law for the crymes lybellit.

THE Justice Repellis the allegiance; in respect of my lord Aduocatis ansuer.

Thaireftir the pannell, nochtwithstanding of my lord Justice interlocutour, desyres ane convenient tyme to be grantit to thame to reid and consider the Summondis producet; and that thai may haif libertie to remoue thame selffis apart, to aduyse thairupoun.—Quhilk the Justice grantit; and ordanit the Summondis to be gevin vp to the pannellis prelocutouris, to be advyset thairupoun.

It is allegit be Mr Thomas Nicolfoun, for the pairt of the pannell, that he did na wrang in taking of ffrances Hay *privata autoritate*; becaus it is of verritie, that vpone Fryday, the fyftene day of December, immediatlie preceeding the day of his allegit taking, quhilk was vpone the xvij day of the said month, the said vmq^{le} *Frances Hay* had flane vmq^{le} *Adame Gordoun*, brother to the pannell, for the quhilk he fled; and sa, the said Laird of Geicht, being the avenger of bluid, viz. the eldest brother of the said Adame, it was lauchfull to him to ferche and feik the malefactour, to the effect he mycht be presentit to the Justice: Lyk as, be Act of Parliament, maid in the dayis of King James the first, of worthie memorie, Parlamento sexto, cap. 89, the Scheref and haill cuntrie is

commandit to ferehe and feik the man-slayer, being certifeit of the Slauchter; and fa, mekill mair mycht the avenger of bluid, be doing na wrang in the taking: Lyk as, eftir the taking of him, he presentit him to the Schereff but¹ ony hurt of fence, or iniurie done to him: And that it is lauchfull to ony of the people, alfwieill as to the avenger of bluid, it is cleir, be ane verrie trew example; ffor gif ane Theif fteill ony mannis guidis, it is lauchfull to the perfone fra quhome the guidis ar ftowin, to convene his kyn and freindis, and raife the cuntrie, and perfew the Theiff fa lang as he is *in fuga*, ay and quhill he apprehend him, or put him out of the cuntrie; and this he may do but ony Warrant of ane Magiftrat; as is cleir and nottour be the daylie practique of the cuntrie: *Ergo*, in this cryme of Slauchter, quhilk is of far gritter importance than fteilling of guidis, it was lauchfull to ony of the people, *multo magis* the avenger of bluid, to apprehend the malefactour, and delyuer him to the Juftice: And as it was lauchfull to the pannell to ferehe, feik, tak, and apprehend the malefactour, and delyuer him to the Juftice, evin fa it was lauchfull to him to do the famyn with conuening of his freindis, (nawayis granting he did the famyn,) and with quhatfumeuir airmes; ffor vtherwayis, this abfurditie fould follow, that the malefactour fould efcaip, and the innocent perfone fould be flane; in fa far as, gif the innocent perfone fall preife to apprehend the malefactour airmet with hagbutis and piftolettis, namelie, haifing the benefit of ane houfe, it war eafie for him to fla fie as focht him; and fa he fould nocht be apprehendit. *Secundo*, for this caus he did na wrang, becaus it is an reule of the Law, that *conceffo aliquo extremo, conceduntur omnia media, per que pervenitur ad illud*; than it is fubfumet, gif it was lauchfull to tak the man-slayer, as is afoir provin, *ergo*, it was lauchfull to vfe all the midiffis² be the quhilk he fould be taken, baith of airmour and vtherwayis.

It is anfuerit be my lord Aduocat, to the *first* pairt, anent the avenger of bluid, thair is nather Law nor reffone can mak the *Laird of Geicht* the avenger of bluid, bot only the Kingis Maieftie, his Juftice, and vtheris haifing power and authoritie of his Maieftie. As for the argument proponit vpon the Act of Parliament maid in the dayis of King James the ffirst, the allegiance foundit thairupoun is altogidder irrelevant, impertinent, and altogidder repugnant and difconforme to the Act; be the quhilk, it is ftatute, that the Man-slayer fould be perfewit be the Schereff, and the cuntrie to concur; and gif the malefactour be tane be the Schereff, he fould be put in fure firmance, quhill³ the Law be done vpon him; and gif he be tane reid-hand,⁴ to be done with that fone.⁵ It is nevir allegit that the Schereff followit the allegit malefactour, nather that he was

¹ Without.
commission of the fact.

² Means.

³ Until.

⁴ With the red or bloody hand; instantly after

⁵ Sun; day; before sunset of that day.

tane with reid-hand ; fua that the allegiance is altogether irrelevant, quhilk is founded vpon that Act, as direct repugnant thairto : And as to that pairt of the allegiance, beirand that the Laird of Geicht tuik and apprehendit the allegit malefactour, that alledgeance contenis ane grit abfurditie, haifing nather Warrant, grund, nor fundament, nather of the Lawis of the realme, nor of the Ciuile Law ; feing, be the Lawis of this realme, the Schereff is appointit to follow the Man-flayer ; and be the Ciuile Law, it is nocht leifum¹ to ony privat man to tak and apprehend ony perfone, without ane Commiffioun and Warrant frome the Magiftrat : Leg. *Neminem*, Cod. *de exhibendis Reis*, lib. 9, Tit. 3, Leg. vltima, *Neminem exhibendum effe in iudicio precipimus, nifi de cuius exhibitione Iudex pronunciauerit*. Item, Bartolus, ad dictam Legem : Et Domaderius, cap. 15, num. 40, idem afferit : Et toto titulo, Codice *de Plagiariis* : Et lege *Raptores*, de Epifcopis et Clericis : Item, Julius Clarus, § finali queft. 31, in principio : Be the quhilkis premisses, it is cleir, that ane privat perfone, and fpeciallie the pairtie, had na power to tak the allegit malefactour. As to the argument proponit vpon the example of the profecutioun and following of ane Theif, it is altogidder impertinent to this purpois ; feing the Theif is followit, *in ipfo actu*, immediatlie eftir the committing of the cryme, with the guidis and geir of the followeris ; quhilk is permittit be the Lawis of this realme, be the Actis of Parliament maid thairanent, and the vniuerfall confuetude of the fame, it is lauchfull to ony man, in following of his awin guidis and geir, to apprehend the Thevis ; and albeit the Theif be flane in the following, the Slayer is maid frie be the lawis of the realme. It is abfurditie to think that the Schereff him felff may follow ony man committer of the Slauchter, and instantlie put handis in him, at his awin hand, *nifi in flagranti crimine*, quhilk is nocht allegit in this caice ; and albeit he war tane *in flagranti crimine*, or reid-hand, as the Act of Parliament beiris, the Law ought to be done vpon him within that fone. And quhair it was allegit, that gif it war lauchfull to the Laird of Geicht to perfew or tak him, it was lauchfull to tak him with convocatioun of our fouerane lordis legis, and with wapponis forbiddin ; it is anfuerit, that the firft propofitioun is altogidder abfurd, in refpect of the firft anfuer maid be the perfewaris ; and confequentlie, the taking with convocatioun of his ffreindis, and forbiddin wappones, feing he had na authoritie, nather to tak, nor beir forbidden wapponis : In refpect quhairof, the firft allegiance, and haill argumentis thairin contenit, aucht to be repellit.

It is duplyit for the pannel, that his allegiance proponit ofbefoir ftandis verrie relevant, nochtwithftanding of ony anfuer maid thairto ; and quhair the famyn is querrellit,² that thair is no law that makis the avenger of bluid, bot

¹ Lawful.² Disputed ; argued.

the samyn pertenis only to the Kingis Maiestie, it is anſuerit, that the pannell makis no queſtioun thairin *quo ad executionem* ; bot the Law callis him the ane avenger of bluid, *quia habet jus proſequendi ſecundum formam juris*. As to that pairt, alledgeing the diſconformitie betuix the allegiance and the Act of Parliament, it is duplyit, that thai ar verrie conforme ; becaus be baith the Actis allegit, the Kingis haill legis ar commandit to concur and aſſiſt the taking of the malefactour with the Scheref, *ergo*, thair was na wrang done, feing the Schereff was in ſerching ; and in reſpect that he could nocht ſerche in all pairtis ; and the notorietie of the fact, and the malieſactouris fleing, being *in fuga*, and ſa taking the cryme vpone him, quhatſoeuer was done be the pannell man be eſtemit as concurring with the Sher e ſpeciallie, haifing reſpect, that the pannell tuik the malefactour but ony wrang or hurt of his body, or iniurie done to him, and reſeruit him ſaif but ony iniurie, quhill he was preſentit to the Schereff, &c.¹

THE JUSTICE, with advyſe of his Aſſeſſoris, Continewis all forder diſputatioun in this mater to the morne, the firſt of March, 1617.—The Laird of Clwny again becomes his ſurety.

[*Mr Alexander Coluile, Juſtice-Depute.*]

DECLINATURE OF THE JUDGE.

Mar. 1.—IT is allegit be the pannell, that Mr Alexander Coluile can nocht be Judge in this cauſe, in reſpect he is fourtis of kyn to the Countes of Errole ; my Lord of Arrole, hir huſband, being perſewar, viz. The ſaid Mr Alex^r Coluiles grandame was ane dochter of the Houſe of Lochlevin, quha is ane ; the ſaid Mr Alexanderis guidſchir, tua ; the ſaid Mr Alexanderis father, thre ; and him ſelf the fourt : And referris the probatioun of this rekning to Mr Alexanderis awin ayth of verritie.—It is anſuerit be my lord Aduocat, that this Declinatour can nocht be reſſauit this day, becaus Mr Alexander Coluile, being Juſtice-depute in this Judgement, quhilk is ane ordiner and Supreme Jurifdictioun, na declinatour aucht to be proponit aganis him ; at the leiſt, na kinreid² ſould be ony caus to declyne him. *Secundo*, the declinatour can nocht now be reſſauit, becaus the Court being fenſit yſterday, he ſitting as Judge, the perſewaris and defenderis compeirand with thair prelocutouris, thair is ane Interlocutour pronuncet in this caus ; and eftir pronunceing thairof, ane peremptour exceptioun (was) proponit be the pannell aganis ane member of the Dittay ; eftir the quhilk, ane declinatour can nocht be proponit.

To the quhilk it is anſuerit be the pannell, that the declinatour exceptioun

¹ It has not been deemed expedient to insert the whole of the arguments of the parties in this keenly contested case, which are extremely prolix, and occupy above sixty pages of the Record. The opening of the pleadings has been given as a specimen of the procedure of the Court at this early period.

² No objection on the ground of kindred or relationship.

standis relevant, nochtwithstanding of my lord Aduocattis twa answeris; namelie, the *ffirſt* beirand, that Mr Alexander is ane Ordiner Judge of this Court, creat, electit, and ſuorne; that pairt of the anſuer *non relevat*; becaus the creatioun and admiſſioun of Mr Alexander Coluile takis nocht away the pannellis exceptioun declinatour, *ex ſuperveniente cauſa*, vpone conſanguinitie of bluid to the perſewar; ffor than it ſould follow, that in an actioun perſewit befor the Lordis of Seſſioun, quha are ſupreme Judges of the land in ciuile cauſſis, at the inſtance of ane perſone, quhais brother is ane of the Lordis of Seſſioun, it ſould follow that he ſould be Judge to his brother, perſewer in the caus perſewit be him aganis ane vther, quhilk can nocht be: As to the *ſecund* member of the anſuer, beirand, that the pannell can nocht be hard to propone this Declinatour this day, be reſſone that in ane Court haldin yſterday in the ſamyn caus, Mr Alexander ſat as Judge, befor quhome the pannell proponit dyuerſe exceptiones dilatour and peremptour, aftir the proponing quhair of, the pannell can nocht be hard to propone any exceptioun declinatour, be reſſone that ane exceptioun declinatour is the firſt exceptioun ſould be proponit in judgement; —to the quhilk it is anſuerit, that nochtwithstanding of the ſaid ſecund anſuer, the exceptientis declinatour ſtandis relevant aganis the ſaid Mr Alexander Coluile, be reſſone thair was ane ſufficient judgement and judicatorie eſtabliſchet yſterday by¹ the ſaid Mr Alexander, to wit, Sir Williame Heart, ordiner Juſtice, quha ſat in judgement, and pronuncet Interloquitour in this caus; ſa that this exceptioun, gif it had bene proponit yſterday, could nocht be reſpectit, becaus the Judgement had bene ane perſyte Judgmen without him, quhilk is nocht this day in this caice; and ſua, be the preſens yſterday of the ſaid Sir Williame Heart, and his abſence this day, the caice is alterit: In reſpect quhair of, the exceptioun ſtandis relevant, nochtwithstanding of the anſuer. And forder, quhair it is anſuerit, that Mr Alexander Coluile is Juſtice-generall, *in criminalibus*, thair can no exceptioun of conſanguinitie be proponit aganis him as depute, it has nather Law to ſuſtene the anſuer, and it is aganis the daylie practique; ffor thair is na Judge in Scotland that hes that priuilege to ſit *in cauſa conſanguinei*, bot only the Lordis of Seſſioun; quhilk is done of neceſſitie, for vtherwayis thair will be no judgement thair, quhilk is nocht in this caice,—ffor the removeing of ane only Judge may be ſuppleit be the ſitting of ane vther, *vbi non eſt penuria*: And this was practizet in the gritteſt pannell that was in our dayis, betuix the Lairdis of Caddell and Ardkinglas, for the ſlauchter of the Laird of Caddell; in the quhilk, the Juſtice-depute was ſet,² as being depute to the Erle of Ergyle, quha bakit² the perſute; lyk as, the Kingis Maieſtie haveing choſin dyuerſe Judges *ſucceſſiué* eftir vtheris, thay war all deelynit, pairtlie vpone conſanguinitie with the Erle of Ergyle, and pairtlie as being penſioneris to ſic as aſſiſtit

¹ *Forbye*; beſides; independent of.² Declined.³ Backed; countenanced; ſupported.

the perfute ; and namelie, Mr Thomas Henderfoun, Commiffar, was fet, becaus he was within greis¹-defendant with the Hous of Bafs ; and Mr Thomas Nicol-foun, as pensioner to my Lord Ogilvie, quha fortifeit the perfute.

It is allegit be the perfewaris, that the declinatour aucht nawayis to be reffaut for the refones proponit of befoir ; and speciallie, that this Court is a Supream Court *in suo genere, viz. in criminalibus*, and that the said Mr Alexander Coluile hes alreddie fittin and voittit in this caufe, eftir the proponeing of dilatour and peremptour exceptiones thairin, na declinatour exceptionun being proponit aganis him : And quhair it is allegit be Mr Alexander Peibles, that the Lordis of Sefsioun will be declynit, viz. ane brother may nocht judge in ane vther brotheris caus, nor the sone in the fatheris caus, *et c contra* ; that is of verritie, in respect of ane speciall Act of Parliament maid thairanent ; but in all vther cauffis, thair is na exceptionun, nather of affinitie nor consaguinitie, that will declyne ony of the Lordis of Sefsioun. As to the practique allegit concerning *Arkinglas* proces, that aucht nawayis to be respectit in this Judgement, becaus the Justice Generall was partie perfewer, and assistit the perfute, and sa nane of his deputis could fit ; bot we ar nocht heir in that caice.

THE JUSTICE, with advyse of his Assessoris, continewis Interloquitour vpon the allegeances foirfaidis, and anfuers maid thairto, anent the declinatour proponit aganis him, to Tyfday nixt.—The Assyse wairnit *apud Acta* for thair compeirance the said day, ilk perfone vnder the pane of ffoure hundreth merkis.

DECLINATURE of two of the Assessors.

Mar. 4.—It is allegit be my lord Aduocat, that *my Lord of Meidhoip* can nocht be Assessor to the Justice in this caus, in respect my Lord Marqueis of Huntlie, and my Lord of Meidhopes wyfe, ar within greis-defendant, viz. : My Lord Marqueis is ane ; his Lordschipis mother, the Countes of Huntlie, tua ; and hir father, James Duik of Chattellerault, third ; on the ane syde : And the Bischope of St Androis, brother to the Duik, ane ; the Laird of Blair, his sone, tua ; and my Lord of Meidhopes wyfe, the Laird of Blairis dochter, the third ; on the vther syde. In respect quhairof, he can nocht be Assessor.

It is lykwayis allegit be my Lord Aduocat aganis *Sir Andro Hammiltoun of Reidhous*, that his lordschip can nocht be Assessor to the Justice in this caufe ; because my Lord Marques and he ar ferdis of kyn, and sa within greis-defendant, viz. : my Lord Marqueis is ane ; his Lordschipis mother, the Countes of Huntlie, tua ; James, Duik of Chattellerault, hir father, thred ; and Beatoun, the Duikis mother, quha was sifter to the Laird of Creiche, fourt ; on the first pairt :—And siclyk, the Laird of Creiche-Beatoun, brother to the Duikis mother, ane ; the Lady Balcleuch, dochter to the said Laird of Creich, tua ; my Lord of Reidhouse mother, the said Lady Balcleuches dochter, thrid ; and my Lord of

¹ Certain degrees of near relationship, called *degrees-defendant*.

Reidhous, him selff the fourt. In respect of the quhilk rekning, the veritie quhairof is sufficientlie knawin to my Lord him selff, he can nocht be Assessor in this cause.—It is answerit be Mr Thomas Nicolson, as prelocutour for the pannel, that he can nocht be bund to geve ane answer to the tua allegiances foirfaidis, foundit vpon the declinatour of the tua Assessouris; becaus in the last Court haldin on Setterday, the first of this instant moneth of Marche, thair was ane Declinatour exceptioun proponit be the pannel aganis the Justice him selff, quhy he could nocht sit as Judge in this cause, viz., that he was within greis-defendant to the Countess of Errole; my Lord of Errole, hir husband, being ane persewar. To the quhilk declinatour, dyuerse answeris, duplyis, and triplyis war proponit, quhilk as yit ar nocht discussit, bot the Judge continewit Interloquitour vpon the said exceptioun-declinatour to this day: And thairfoir, *ante omnia*, befoir any alledgeance may be had ather be persewer or defender, Interloquitour man¹ be first pronuncet vpon the said alledgeance, conforme to the ordour of the proces; quhilk man be done of necessitie; for, gif the Justice find the declinatour relevant, quhilk will be provin be his awin aith of veritie, than consequentlie he can nocht sit as ane Judge; and gif he be removet as Judge incompetent, he can nocht pronounce Interloquitour in the allegiances proponit aganis my Lord of Meidhoip and my Lord of Reidhouse as Assessouris, quidder thay may be Assessouris or nocht, *qui ubi non est Judex, ibi nec Assessor, nec processus, nec sententia interloquutoria, litiscontestatio, nec sententia definitiva*: And thairfoir, quhill first it be pronuncet vpon the foirfaid declinatour proponit aganis the Judge him selff, thair can na alledgeance be proponit or discussit aganis the Assessouris.

It is answerit be my lord Aduocat, as of befoir, that the said Declinatour aganis the Judge, as Justice-depute, can nocht be reslaui, in respect of the estait of the proces.

THE Justice continewis the dyet, and Interloquitour vpon the exceptiones-declinatour aboue written, to Fryday nixt, the sevint of Marche instant: And Ordanis Cautioun to be of new fund be the pannel for his entrie that day, to vnderly (the Law) for the said cryme, vnder the pane of ffyve thousand merkis.

The Assyse wairnit thairto, *apud Acta*, ilk persone vnder the pane of ffyve hundreth pundis money.

[*Mr James Bannatyne and Mr Alexander Colville.*]

COMPEIRIT judiciallie Williame Hay, seruitour to my lord Erle of Errole, and producet ane Commissioun of Justiciarie, vnder his Maiesteis Casket² and Court signet, subscriyuit be my Lord Chancellor, my Lord of Mar thesaurer, and

¹ Must.

² A silver stamp, bearing an exact *fac-simile* of the King's signature, invented for the purpose of abridging labour to the King, whose subscription is required to so many documents. It is still in use, and is affixed to certain writings not requiring his Majesty's 'sign-manual.'

my lord Marqueis of Hammiltoun; quhairby Mr James Bannatyne of Newtyld is constitute his Maiesteis Justice be Commissioun. As also producet thairwith ane Act of Counfall, beirand the said Mr James acceptatioun of the said Commissioun of Justiciarie and office thair of, and geving his ayth in thair lordschippis prefens, for his faithfull discharge of the said office. Of the quhilk Commissioun and Act of acceptatioun and creatioun, the tennour followis :

COMMISSION in favour of Mr James Bannatyne of Newtyld.

JAMES R.

JAMES, be the grace of God, King of Grit Britane, France, and Ireland, defender of pe faith. To all and findrie our legis and subiectis quhome it effeiris, to quhais knowlege thir our letteris fall cum, greting. FORSAMEKIL AS George Gordoun of Geicht, being callit and convenit befor our Justice, in our Tolbuthe of Edinburghe, to haif vnderlyne pe law for pe taking, detening, and executioun of vni^{le} Frances Hay, and for beiring, weiring, and schuiting of hagbutis and pistolettis, and for pe perfute and invasioun, hurting, wounding, and mutilatioun of the thre brether of Brunthillis; in maner, and at pe tyme specifeit and contenit in the Criminal Letteris direct pairupoun : And dyuerse dyettis being keipit to this effect; in end, the matter hes reslavit ane delay and continuatioun, by the age, infirmite, and seiknes of Sir Williame Heart, quho may nocht attend pairupoun; and by ane declinatour proponit aganis Mr Williame Coluile, colligue to pe said Sir Williame, in the office of Justiciarie, sua that now the delay and hinder of Justice proceidis vpon the want of ane vn suspect Judge. QUHAIRFORE, We, with advyse of the Lordis of our Secreit Counfall, haif maid and constitute our louit *Mr James Bannatyne of Newtyld*, oure Justice in that pairt, to the effect vnderwritten; Geveand, grantand, and committand to him our full power and commissioun, expres bidding, and charge, to vse and exerce the office of our Justice in all and findrie thingis concerning the Tryell of pe said George Gordoun of Geicht, vpon the perticuler crymes and pointis of Dittay specifeit and contenit in pe Criminal Letteris raiset aganis him. And for this effect, to fence, hald, and continew Justice Courtis, ane or ma, within the Tolbuth of our burgh of Edinburgh, suitis to mak be callit, absentis to amerchiat, and to creat officeris and memberis of Court neidfull, if neid beis; and in the saidis Courtis the said George to call, be Dittay to accuse, and him to the knowlege of ane Assyse to put; and as he fall happin to be fund culpable or innocent of pe crymes contenit in the saidis Criminal Letteris, or ony of thame, to caus Justice be ministrat vpon him, conforme to pe lawis of our realme; Assyffis neidfull to this effect, ilk persone vnder suche panes as fall be thocht meit, to summond, wairne, chuse, and caus be suorne, and generallie all vper thingis to do, exerce, and vse, quhilkis for executioun of jis our Commissioun, ar requisite and necessar; fferme and stable halding, and for to hald all and quhatsoeuer thingis fall be lauchfullie done heirin. GEVIN vnder our signet, Att Edinburghe, pe fourt day of Marche, and of our regune pe xiiij and fiftie 3eiris, 1617.

AL. CANCELL^s. AL. MAR. HAMMILTON.

APUD EDINBURGHE, *quarto die mensis Mareij, anno domini millesimo sexcentesimo decimo septimo*, Red, past, voitit, and allowit.

J. PRYMROIS.

ACT of Acceptation by Mr James Bannatyne.

APUD Ed^r, *quarto die mensis Mareij, 1617*. The quhilk day *Mr James Bannatyne of Newtyld*, being maid and constitute our fouerane lordis Justice, for trying of George Gordoun of Geicht, vpon the crymes specifeit and contenit in the Criminal Letteris raisit aganis him, at the instance of the mother, broper, and freindis of vni^{le} Frances Hay, and at the instance of the brether of Brunthill, and of our fouerane lordis Aduocat, for his hienes intreis; as in the Commissioun maid to the said Mr James pairvpoun, of the dait of thir presentis, at lenth is contenit. The said Mr James compeirit personallie, befor the Lordis of Secreit Counsell, Acceptit the said Commissioun vpon him, and gave his aithe

that he fall discharge the said Commissioun vrichtlie and faithfullie, according to his knowlege; as he will answere to God and the Kingis Maiestie pairupoun.

Extractum de libris Actorum Secreti Consilij f. d. n. Regis, per me Jacobum Prymrois Clericum ejusdem, sub meis signo et subscriptione manualibus.

JACOBUS PRYMROIS.

[*Mr James Bannatyne and Mr Alexander Cohule.*]

Mar. 7.—THE Justice continewis this matter to the morne, the aucht of this instant. The Assyse wairnit thairto, *apud Acta*, &c.

The Laird of Geicht protestis, that the production of the said Commissioun of Justiciarie, and fenceing of this dayis Court, sould nawayis preiudge him of his declinatour the nixt dyet, nor ony vther declinatour proponit be him of befor in this cause.—My lord Aduocat protestis in the contrair.

[*Mr James Bannatyne.*]

Mar. 8.—THE persewaris, nochtwithstanding of the former declinatour proponit aganis the tua Assessouris, ar content that thai remane Assessouris in this caus, conforme to the Counsellis Act maid anent thair constitution; and passis fra the saidis declinatouris.

Mar. 11-12.—THE ‘disputatiounis’ proceeded at great length, on both sides, on this day, ‘Tyfday the xj instantis,’ and the following day, on the merits of the cause. They are very prolix, and unnecessary to be inserted in this place.

Mar. 13.—THE Justice and Assessouris, ffor obedience of ane WARRANT of the Lordis of Secreit Counfall producet be my Lord Justice Clerk, continewis this Justice Court, and all forder disputatioun in this cause, to the aughtene day of Junij nixtocum; and Ordanis the pannell to find caution, &c.

JUSTICE, Justice Clerk, and 3our deputis. 3ow fall, vpone the sight heirof, continew 3our Court and dyet appointit for Tryell of George Gordoun of Geicht, ffor the taking, deteing, and executioun of vm^qle Francis Hay; and for pe beiring and weiring of haquebutis and pistolettis; and for pe persute and invasioun of the brejer of Brunthillis, vntill the aughtene day of Junij nixtocum; takand new caution, conforme to pe ordour: Quhairanent thir presentis fall be 3our Warrant. ATT ED^r, the xij day of Marche, 1617.

AL. CANCELLS. AL. MAR. BYNNING.

My lord Aduocat declaris that he consentis to the former continewatioun, only becaus of his Maiesteis Letter, direct to the Lordis of Secreit Counfall, in that matter, and vpone na vther respect.—The parties find caution for keeping of his Majesties peace, &c.

(Jun. 18.)—THE Justice, be direction of his Maiestie, continewis this dyet to the xxvij of Junij instant, &c.

(Jun. 27.)—THE Justice, be direction of the Kingis Maiestie, declairit be my lord Aduocat, Continewis all forder disputatioun in this proces, and tryell of the perticuler crymes *respectiue* contenit in the summondis, to the thrid day of the nixt Justice-air of the scherefdome quhair the parteis, alsweill persewaris as defenderis, duellis (‘Aberdene’), or soner vpone xv dayis wairning: And Ordanis

the Laird of Geicht to find Cautioun for his compeirance, to the effect and in maner aboue writtin, vnder the pane of ffyve thowfeand merkis, conforme to his Maiesteis directioun, reportit be his Maiesteis Aduocat, as said is.

The said Laird ffind Williame Gordoun of Rothemay, fear of Cairneburrow, fouertie for his entrie, &c.

[*Mr Alexander Coluile, Justice-Depute.*]

Adultery—Bigamy.

Mar. 14.—ALEXANDER THOMESONE, skynner, burges of Edinburghe, brother to Johnne Thomesone, Leyth; Johnne Guthrie, *alias* callit Williame Laird, and Jonet Cuthbert.

Dilaittit of the crymes of Adulterie, committit be thame, in maner, and at the tymes specifeit in thair Dittayis.

The pannell acknowleges the crymes contenit in thair feuerall Dittayis, and craves God and the Kingis Maiesteis pardoun; and offeris thame in his Maiesteis will thairfoir.

VERDICT. The Assyse, be the mouthe of George Carnebie, indueller in Edr, all in ane voice, ffind the saidis perfonas to be ffylet, culpable, and convict.—

SENTENCE. In respect of the quhilk convictioun, THE JUSTICE, conforme to ane Warrant of the Kingis Maiestie, quhairof the tennour followis:

TO our JUSTICE GENERALL of our Kingdome of SCOTLAND, and his deputis quhatfoeur, quhome thase presentis may concerne; and to all and each of thame.

JAMES R. QUHAIRAS, by expres Warrant and command frome ws, our Aduocat is criminallie to accufe and persue befor yow one Alexr Thomesoun and one Jonet Cuthbert, tuo famous and notorious Adulteraris: Althogh thair cryme and offence thairin be capitall, and most, by our Lawis, infer payne of death against thame, jit, out of our princelie grace and mercie, We ar plesed to mitigat the feveritie or extremitie of Law in thair behalf. Requyreing yow, by these presentis, in caice of pair convictioun, to ordane the said *Alexander* to be Banished our dominiones, and his escheit to be furthwith vptakin for our vse be our thesaurer: AND that ye said *Jonet* be Banished our burgh of Edr, and the pairtis of ye cuntrie pairabout. In which behalf, and for performeing of ye whole premiffes, these salbe to yow ane Warrant sufficient. GEVIN at Whytehall, the 26th of Januare, 1617.

Ordanit and Adjudget the said *Alexander* to be banished his Maiesteis haill dominionis, and nocht to returne within the samyn at na tyme heireftir, without his Maiesteis Licence, vnder the pane of deid; as also, that his haill moveable guidis be escheit, &c. AND siclyk, Ordanit the said *Jonet* to be banished furth of the burgh of Edr and tuelf myles thairaboutis, and nawayis to be fund thair-intill, at na tyme heireftir, without his Maiesteis Licence, vnder the said pane of deid. And as concerning the said *Johnne Guthrie*, Ordanit him to be tane bak to the Tolbutth of Edr, therein to remane in fure firmance, vnto the tyme Dome be pronuncet against him.

SENTENCE *against Johnne Guthrie, alias Williame Laird.*

Compeirit Sir Williame Oliphant of Newtoun, knycht, Aduocat to our fouerrane lord for his hienes intreis, and producet his Maiesteis Warrant, direct to the Justice, quhair of the tennour followis :

To our JUSTICE GENERALL of our Kingdome of SCOTLAND, and his deputis quhatsoever, whome these presentis may concerne; and to all and each of thame.

JAMES R. QUHAIRAS, by expres Warrant and command from Ws, our Aduocat is criminallie to accuse and persue, befor yow, on *Johnne Guthrie*, for mariage of tuo wyfes, and keiping (befydis thame) of a thrid woman for his concubene; whiche being a cryme so odious and intollerable amongst Christianes, and mereiting to be most exemplarie puneished: THEASE ar pairfoir exprellie to will and command yow, in caice of the said Johnnes convictioun, to caus pronounce and execute Dome and Sentence of Death aganis him, accoirding to þe ordinance of our Lawis maid for pwneischment of suche offenderis. In which behalf, and for performeing of þe whole premisses, these fall be to yow ane Warrant sufficient. GEVIN at Whytehall, the 26th of Januar, 1617.

THE JUSTICE Ordanit the said Johnne Guthrie, *alias* Laird, to be tane to ane gibbet, befyde the croce of Ed^r, and thair to be HANGIT quhill he be deid; and all his moveable guidis to be escheit and inbrocht to his Maiesteis vse, &c.

[*Archibald Earl of Ergyle, Justice General; Mr Alex. Coluile, his depute.*]

Slaughter.

Jul. 16.—JOHNE KIRKPATRIK, seruand to Mr Walter Kynnynmonth of Callinche (Kilduncane.)

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Andro Kynnynmond, sone to David Kynnynmond of that Ilk; committit vpone the tent day of Junij last-bypast, viz. The said Johnne being in companie with Mr Walter Kynnynmond, appeirand of Kilduncane, his maister, Jedione Kynnynmond, brother to the said Mr Walter, Patrik Kynnynmond, sone to the said Mr Walter, Hew Dik, seruand to the said Mr Walter, Thomas Fentoun, messinger citiner¹ in St Androis, Thomas Fentoun, his sone, thair, Johnne Clelland, and . . . Clelland, sones to Robert Clelland of Fermlaw, and . . . Broun, citiner of St Androis, with convocation of his Maiesteis leiges, to the number of tuentie persones, or thairby, all bodin in feir of weir, with fuordis, daigeris, plait-flevis, hagbutis, and pistolettis, exprellie prohibeit to be borne, worne, vsed, or schote with, be the Actis of Parliament; haifing confauet ane deidlie feid, rancour, and malice aganis the said vmq^{le} Andro, vmbeset² his hie way and passage, vpone Cires-mure, ane myle or thairby fra the burch of Couper; quhair he, being only accompaneit with ane seruant of his awin, war, in sober and quyet maner, for the tyme, cuning furth of the hie way, lipning for na harme, &c., and thair set vpone the said vmq^{le} Andro, schot him throw the body with hagbutis, and crewallie hurt and demanit³

¹ Citizen; inhabitant; probably inferring that he was not a free *burgess*.
'waylaid.'

³ Abused. Literally, treated; used.

² Beset; blockaded;

him and his seruand with suordis, in dyuerse pairtis of thair bodeyis, to the effusioun of thair bluid in grit quantiteis : Off the quhilkis (woundis) and hurtis gevin to the said vmq^{le} Andro, he immediatlie deceissit, &c.

VERDICT. The Assyse, be pluralitie of voittis, stand, pronuncet, and declairit the said Johnne to be fylet, culpable, and convict of airt and pairt, &c.

The Justice superceidis the pronunceing of Dome, &c.¹

[*Mr Alexander Coluile, Justice-Depute.*]

Child-Murder.

Jul. 24.—BESSIE DUNCANE, seruatrix to George Craig in Eister Dudingstoune.

Dilaitit of the crewall and vnnaturall Murthour and putting to death of ane young infant man-bairne of hir awin, immediatlie eftir the beiring thair of, be putting it vnder the stra of the bed quhairupone scho lay ; and thaireftir lying thairupoun, and smoiring² the said infant to deid : committit in ane bak hous of the said George Craigis, vnder nycht, vpone the fourtene day of Julij instant ; Williame Borthuik, sone to Johnne Borthuik in Waster Dudingstoun, ane young boy of xvij yeiris of age, being the father thair of.

The said Bessie, with teiris, in grit penitencie, confessit the Dittay to be of verritie ; and cravet God mercie for the samyn.

VERDICT. The Assyse, all in ane voce, be the mouth of Johnne Levingstoun, bailzie of Dudingstoun, stand, pronuncet, and declairit the said Bessie, in respect of her awin Judiciall Confessioun, to be fylet, culpable, and convict, &c.

SENTENCE. To be tane to ane gibbet at the mercat croce of Ed^r, and thair to be Hangit quhill scho be deid ; and all hir moveabill guidis and geir, gif scho ony hes, to be escheit, &c.

Falset—Forgery—Perjury.

Nov. 17.—MR JOHNNE MUREHEID, Notter in Tueidmouthe.

Dilaitit of airt and pairt of the formeing and wryting of ane fals nyntene-yeir Tak,³ and counterfuteing of vmq^{le} Johnne Nisbet of Swannisfeild his subscription thairto (allegit fetter⁴ of the said Tak) eftir his deceise : And of periureing him self, in maner set down in his Dittay.

The pannell allegit that my lord Justice can nocht be Judge competent to him, in this matter ; becaus he (the pannell) is ane stranger, quha hes duelt and had his continuall residence out of this cuntrie within the toun of Tued-mouth, in England, thir dyuerse yeiris bygane ; and thairfoir, conforme to the Act of Par-

¹ No farther entries occur ; so that it is probable a Remission was granted.

suffocating. ³ A Lease for nineteen years.

² Smothering ; ⁴ The landlord or proprietor of the ground, who set it in Lease.

liament, aucht to be remandit fra this Judicatorie to the Justice of Ingland, at the leift, to the Bifchope of Dureham, within quhais diocie he duelt, the pannell being ane Ecclefiastickall perfone, fervand at the Kirk of Tuedmouth: And laft, he appaillis to his Maieftis mercie and clemencie; and offeris him felf in his hienes will, for the crymes contenit in the Dittay.

My lord Aduocat, for verificatioun of the Dittay, producet the pannellis Depositiones, with the fals Tak, quhilk is fund to be ffals and ffengeit befor the Lordis of Seffion, and in respect thair of ordainit to be cancellat and diftroyit: And anfuerand to the allegiances maid be the pannell, fays, that nochtwithftanding thair of, he aucht to be put to ane Affyse, in respect the Act of Parliament allegit, is only in fauouris of flic perfones as duellis in Ingland, and being citet for flaughter, thift, burning of houffis, and vtheris crymes, perticulerlie expreffit thairin, quhair of the cryme lybellit is nawayis comprehendit, and ar fugitiue thairfor; and the pannell, cuning willinglie to this cuntrie to beir witneffing in ane matter betuix tua Scottis perfones, was nawayis fugitiue: And as to the privilege of his profeffion, that he is ane Ecclefiastickall perfone, fays that the famyn aggrages his offence: And thairfor, fould be iuftlie puneift for the ffalfet and Periurie confeffit be him and contenit in his Dittay.

THE JUSTICE, nochtwithftanding of the pannellis allegiances, Remittis him to the tryell of ane Affyse.

ASSISA.

Eduard Johnneftoun, Proveift of Annan,
Johnne Ramfay, mercheand burges of Ed^r,

James Douglas, bailzie of Dalkeith,
James Nafmyth of Poffo.¹

VERDICT. The Affise, all in ane voce, be the declaratioun of Eduard Johnneftoun, chancellor, ffand the faid Mr Johnne to be ffylet, culpable, and convict of the fforgeing and fformeing of the faid fals Tak; and of counterfuteing of the faid vmq^{le} Johnne Nifbetis fubfcription thairto, eftir he was deid; and Periureing, of him felf, in maner fpecifeit in his Dittay.—SENTENCE. To be tane to the mercat croce of Ed^r, and thair vpone ane gibbet to be Hangit quhill he be deid; and all his moveabill guidis to be efcheit, &c.

Usurpation of the King's Authority—Hamesucken, &c.

Jan. 9, 1618.—THOMAS MELDRUM of Idene,² Walter Grant, his fervand, James Grant in Tulliebo, his brother, and Johnne Roif, alfo his feruand.

Dilaitit of Vfurpation of our fouerane lordis authoritie, in cuning, vnder filence and clud of nycht, to Johnne Meldrum of Ordley his duelling hous of

¹ The remainder are 'mercheandis in Ed^r.' George Drummond of Cattifelbok (*Cat's-elbow*), Mr Johnne Rutherford, Proveift of Jedburgh, and six others, were each 'vnlawit in ye pane of ane hundredth merkis,' for not passing on the said Assise.

² See Nov. 20, 1618, &c.

. . . ., and thair, be way of Hamefucken, clymning the walls thairof, turring¹ the ruif of the chalmer quhair he lay bedfast, nocht weill convaleffit of ane fever quhairwith he was afflictit and visseit, be the space of tuentie foure oulkis ofbefoir : And for taking of him furth thairof, and cayreing him as ane captiue and priffoner to the place of Idene, quhair he was detenit in privat and strait priffone, be the space of foure dayis and foure nychtis ; vrgeing him, all that tyme, to difcharge certane actiones quhilk he had depending aganis the said Thomas : And for the haill remanent crymes contenit in the Letteris : Committit vpon the aucht of Maij, 1612 yeiris.

PERSEWAR, Johnne Meldrum of Ordley, Sir Williame Oliphant of Newtoun, kny^t, Aduocat to our fouerane lord, for his hienes intreis.

PRELOCUTOURIS in defence, Mr Thomas Hoip, Mr Thomas Nicolfone, Mr James Lawtie.

THE JUSTICE, for obedience of the Warrant of the Counsell, direct to him, fufcryuit be my Lord Chancellor, continewis this dyet to the xvj instantis : And Ordanis the pannell to find caution for thair compeirance that day, vnder the panis contenit in the Actis of Parliament.—Patrik Meldrum, ffear of Idene, become fouertie for the said Thomas, his father, &c.

(Jan. 16.)—Continued, by Warrant of the Secreit Counsell, to the xxj instant.

(Jan. 21.)—The Justice, of consent of pairtie, continewis this matter to the thrid day of the nixt Justice-air of Aberdene, or soner, vpon xv dayis wairning. George Seatoun of Schettin and the said Patrik Meldrum become pleges and fouerteis, coniunctlie and feuerallie, &c.

[*Mr Alexander Coluile, Provost of Kilmondy, Justice-Depute.*]

Slaughter—Convocation of the Lieges, &c.

Jan. 14.—WILLIAME JOHNNSTOUN, callit *of Lokerbie* ; Archibald J., his brother ; Mungo and Hercules J., fones to the said Williame ; Williame J., fone to vmq^{le} George J., in Lokarbie ; Williame J., in Grenesfyde ; Thomas Harknes, in Lokarbie ; Johnne Chalmer, thair ; Andro Chalmer, thair ; Johnne Johnnestoun, fone to David J., in Cleuchheid ; Williame J., in Auldwallis ; Patrik J. of Mylnebank, his brother ; Johnne J., in Turmour, callit *of Lokarbie* ; Andro J., his fone ; Archy Halyday, in Turmour ; Andro Chalmer, thair ; Johnne Beil, in Lokarbie ; Francis Bell, thair ; James Kennydie, in Bektoun ; Andro Chalmer, in Dames.

Dilaitit of airt and pairt of the Slaughter of vmq^{le} James Johnnestoun, in Kirktoone ; committit with convocation of our fouerane lordis leigis, vpon the

¹ Forcing a passage, by breaking through the roof. Fr. *tirer* ; and A. S. *tyr-an*, to tear.

xxv day of April, 1617, be geving to him of dyuerse crewall and deidlie woundis in the heid, left airme, left hand, and left pape :¹ Off the quhilkis he nevir conualeffit, speciallie of the woundis ressaui in his heid, threfcoir and nyne banes being tane furth thair of ; and at last, vpone the first day of December last, he deceiffit, being vnder cure of the saidis woundis sevin monethis and ten dayis of befoir.

PERSEWARIS, Agnes Johnnestoun, the relict, Sir Williame Oliphant of Newtoun, kny^t.

PRELOCUTOURIS in defence.

Mr Thomas Nicolfone, Mr Alexander Peiblis, Mr James Oliphant, Adame Cuninghame.

The Justice, of consent of pairtie, continewis this dyet to the xxv of Februar nixt, and Ordanis the pannell to find caution for thair entrie that day, vnder the panes contenit in the Actis of Parliament : Quha for obedience of the said ordinance, stand James Johnnstoun of Wastraw, and Archibald Douglas of Kelheid, brother to my lord of Torthorrell, bayth personallie present, cautioneris and fouerteis, conjunctlie and feuerallie, for thair re-entrie, &c.

(Feb. 25.)—Compeirit Mr James Oliphant, and producet ane Warrant of the Lordis of Secreit Counsell, procuret be the (saidis) persones (on pannel), daitit the xix day of Februar instant, be the quhilk the Justice is ordanit to continew this dyet to the xxvij day of Marche nixtocum, &c. Which desire was granted ; Robert Johnnstoun of Raecleuch becoming cautioner for the pannels' entrie.

PERSEWAR, Andro Johnnestoun, as fone.

PRELOCUTOUR in persute, Sir Robert Gordoun of Lochinvar, kny^t.²

(Mar. 27.)—It is declairit be the pannell, befoir thai cum to thair allegiance, be way of informatioun to the Justice, that it wald pleis his Lordschip vnderstand, that the matter fell furth eftir this maner. My Lord of St Androis that now is, being Archebischope of Glesgow for the tyme, haifing ane cair to haif the hail Kirkis within his dyocie³ sufficientlie plantit ; and eftir vizitatioun, cuming to the Kirk of Dryfdaill, quhair it was fund be him that the watter of Dryfe ran sa violentlie, eftir ane speat,⁴ throw the hail kirk yaird and landis adjacent thairto, that the Kirk it selff was liklie to becun ruinous and decay, except the course of the said watter had bene divertit and drawin ane vther way thairfra : For remeid quhair of it was aggreit, with consent of the hail gentilmen of the parochin, that the said watter sould be divertit ane vther way ; and according thairto, it was appointit, that vpone the said xxv day of Apryle, the said Williame Johnnstoun, with assistance of the parochin, sould cum, with spaidis and schuiles, to mak ane watter-gang : In the doing quhair of, the said vinq^{le} James Johnnstoun, with his fones, come bodin in feir of weir, and maid interruptioun to the persones foirsaidis that war casting the said watter-gang, and inuaidit and persewit dyuerse of the persones that war working, for thair slauchter ; be occasioun of the quhilk

¹ Breast.

² These in addition to the persons abovenamed.

³ Diocese.

⁴ Flood.

perfute and invasioun ane straik was gevin to the said vmq^{le} James vpon the heid with ane spaid or schule, be quhat persone the pannell knawis nocht: Eftir the quhilk straik he convalescit, and was at tua feuerall Justice-Courtis in Jedburgh; was also at the Parliament in Ed^r; raid in dyuerse pairtis of the cuntrie, and within England; and thaireftir, fell seik of ane fever, quhair of he deceissit; as is nottour to the haill cuntrie.

Quhilk being premittit,¹ it is allegit peremptourlie for the pannell, that thay can nocht be put to ane Assyse for the cryme lybellit, in respect the said vmq^{le} James Johnnstoun, for quhais slauchter thai ar persewit, was slane at the horne, and deceissit vnrelaxit thairfra, ffor ane criminall cause, viz. ffor airt and pairt of the Slauchter of vmq^{le} Hew Dowglas of Dalvene. *Igitur*, &c.—To the quhilk it is answert be the persewaris, that the allegiance aucht to be repellit, becaus the said vmq^{le} James was relaxt fra the said Hoirning: And producet the Relaxatioun for verificatioun thair of.²—It is duplyt be the pannell, that the Relaxatioun producet meittis nocht the Hoirning; becaus the said vmq^{le} James Johnnstoun is relaxt fra the horne lang eftir the tyme lybellit of the straikis gevin to him quhair of he deceissit, to wit, lang eftir the xxv day of Apryle, 1617, he nocht being relaxit quhill the xxviiij of October thairefter.—To the quhilk it is answert be the persewaris, and allegit,³ that the Hoirning quhair-upoun the said allegiance is foundit is null, becaus the said vmq^{le} James Johnnstoun being designet be the said Letter of Hoirning to haif ane certane duelling-place, viz. in Twnnnergathe, the tyme of the raising thair of, he is nather charget personallie nor at his duelling-place, quhilk aucht to haif bene done; he being ane Scottis subiect, duelland within Twnnnergath, quhair he duelt the tyme of the geving of the charge to him, be oppin proclamatioun; lykas, he duelt thairin dyuerse yeiris of befor.—It is answert be the pannell aganis the allegiance, foundit be the persewaris vpon the nullitie of the Hoirning, that the said allegiance aucht to be repellit, in respect of the privilege and Dispensatioun set down in the Letteris of Hoirning producet, quhilk sustenis the charge gevin to him, be oppin proclamatioun at the croce of Dumfreis, to be als lauchfull as gif he war charget personallie or at his duelling-place, for the resson speifeit in the Letteris.

It is allegit be the persewaris, as to the Relaxatioun and allegiance maid thairupoun, that the said Relaxatioun is lauchfull and sufficient in the selff; becaus the samyn is purchest be the said vmq^{le} James, and he lauchfullie relaxt, be vertew thair of, lang befor his daithe.—The pannell repeittis thair former answer.

¹ Premised.

² On margin, '1 Aprilis, 1618. This Relaxatioun gevin vp agane to Andro Johnnstoun, producer thair of.'

³ Pleaded; urged as a plea.

It is ffordor allegit be the pannell and thair prelocutouris, that thai can nocht be put to ane Assyse for the cryme lybellit, becaus the said vmq^{le} James Johnnstoun was flane and deit at his Maiesteis horne ffor ane criminall cause, viz. ffor the steilling of tua horse pertening to James M^cmathe in Knokinhair; committit be him in the moneth of September, 1597; ffor the quhilk, being persewit criminallie befor the Justice, and charget to vnderly the Law within the tolbutth of Ed^r, vpone the xxj day of Januar, 1607 yeiris, was, for nocht finding of cautioun, denuncet and declairit fugitiue fra his hienes lawis for the said cryme: And ffor verificatioun thair of, producet the Extract of the Hoirning.—To the quhilk it is ansuerit be the persewaris, that the Summondis and Dittay aucht to pas to ane Assyse, nochtwithstanding of the allegiance proponit be the pannell, foundit vpone the tua criminal Hoirningis producet; becaus the said vmq^{le} James Johnnstoun of Kirkcaldy was nocht only relaxt fra the first Hoirning befor his deceis, bot also becaus it is speciallie provydit be Act of Parliament, maid in the moneth of October, 1612 yeiris, that all persones duelland vpone and within the boundis of the lait Bordouris of this kingdome, speciallie within the boundis of the scherefdom of Dumfreis and stewartrie of Annandail, quhair the said vmq^{le} James duelt, ar fred and relevit of all and quhatsumeur criminell caussis that could be laid to thair charges, ffor quhatsumeur ffyre-raisingis, slauchteris, thiftis, and stouthes, or vther criminall caussis quhatsumeur, befor his Maiesteis going in Ingland, quhilk was in Apryle, 1603 yeiris, &c.

THE JUSTICE continewis Interlocutour, vpone the allegiances foirfaidis, to Wednisday nixt. The Assyse wairnit *apud Acta*, ilk persone vnder the pane of ij^c merkis. Williame Douglas, younger of Caschogill, become fouertie for the entrie of the hail persones on pannell, &c.

(Apr. 1.)—THE Justice, be directioun of the Lordis of Secreit Counfall, Ordanis the persones on pannell to find cautioun for thair entrie and compeirance of new agane, befor the Justice or his deputis, the thrid day of the nixt Justice-air of the scherefdom or stewartrie quhairin thay duell; or soner, quhan or quhair it fall pleis his Maiestie, vpone xv dayis wairning, &c. Williame Douglas of Caschogill pleige and fouertie, &c.

Inbading—Hurting and Wounding—Slaughter.

Feb. 13.—HEW FALCONER of Innerlochtie; Hew Falconer, his sone; Frances Hay and Alexander Hay, sones to Williame Hay of Mayne; Thomas Grant, brother to James Grant in Daltulleis; Lauchlane Grant of Wester Elcheis; Johne Grant, his sone.

Dilaitit of airt and pairt of the invading, hurting, and wounding of Thomas Grant of Cardellis, and slauchter of vmq^{le} Patrik Grant, his sone; committit within the burgh of Elgyn, the xj of November last, 1617.

PERSEWARIS, Thomas Grant of Cardellis, as father ; Johnne Grant, appeirand of Cardellis, as brother ; Sir Williame Oliphant of Newtoun, knycht, for his Maiesteis intreis.

THE JUSTICE, of consent of ather pairteis, and accoirding to ane directioun gevin to his lordschip be the Lordis of Secreit Counfall, continewis this matter to the thrid day of the nixt Justice-air of the scherefdom quhair the defenderis duellis, (Elgyn,) or foner, vpone xv dayis wairning, &c.

Sir Alexander Gordoun of Clwnie, kny^t, become fouertie for the said Thomas Grant, vnder the pane of tua thowseand merkis ; Sir Alexander Falconer of Halkertoun, kny^t, become fouertie for the said Hew Falconer and his sone ; James Hay, appeirand of Mayne, become fouertie for Frances and Alexander Hayis, his tua brether ; and Robert Innes of Balvany for Lauchlane and Johnne Grant—all vnder the panes contenit in the Actis of Parliament.

Slaughter.

Mar. 18.—WILLIAME JOHNNSTOUN, callit of Lockerbie, and Johnne Carrutheris of Rammerfcaillis.

Dilaittit of airt and pairt of the Slauchter of vmq^{le} Cristopher Wigholme,¹ burges of Sanquhar ; committit in Junij, 1594.

PERSEWAR, Niniane Wigholme, as sone ; Sir Williame Oliphant, knycht.

PRELOCUTOURIS in defence, Mr James Oliphant, Adame Cuninghame, Aduocattis.

The persewar passis fra the persute of the said Johnne Carrutheris *pro loco et tempore*.—It is allegit for Williame Johnnstoun, that he can nocht be put to the knowlege of ane Assyse for the crymes lybellit, in respect his Maiestie and Estaittis, be Act of Parliament, maid in October 1612, hes, for the reffone mentionet thairintill, geving ane generall pardoun to all maner of persones duelland within the boundis of the lait Bordouris of this Kingdome, for all maner of crymes committit be thame preceding his Maiesteis going in Ingland, &c.—To the quhilk it is ansuerit, that the allegiance aucht to be repellit, in respect of the summondis beiring the fact lybellit to be persewit be the pairtie, with concurse of his Maiesteis Aduocat ; quha is speciallie exceptit in the said Act, and hes power, be vertew thairof, to persew.

THE Justice continewis Interloquitour to Fryday nixt ; and Ordanit the pannell to find cautioun for his compeirance, as also for the entrie of his brother, the said day.—Robert Somerwell of Smailhomes become fouertie, &c.

(Mar. 20.)—THE JUSTICE ordanit cautioun to be ffund, that the said Williame and Frances fall compeir befor the Justice or his deputis, the thrid day of the Justice-air of the scherefdom or stewartrie quhairin thay duell, or foner, vpone xv dayis wairning.—Robert Somerwell of Smailholme, and Williame Johnnstoun of Currielaw, become pleges and fouerteis, &c.

¹ This name is now written *Wigham*, and *Whigam*.

Slaughter.

Mar. 18.—ROBERT SYMMER, sone to the Laird of Balgordie.

Dilaittit of the crewall Slauchter of vmq^{le} Dauid Graham, sone to vmq^{le} James Grahame of Leuchland ; committit vpone the xxix day of Apryle, 1616 yeiris, vpone the Hauche of Infche, neir to the Mekill-mylne of Brechin, be streking him throw the body with ane rapper-fuord ; quhairof, within sex or sevin dayis thaireftir, he deceiffit.

PERSEWER, James Grahame, as brother to the defunct ; James Keith of Harviestoun, brother-in-law ; Sir Robert Grahame of Morphie, neir kinsman ; Sir Williame Oliphant of Newtoun, kny^t.

PRELOCUTOR in defence, Mr George Symmer.

The pannell, being accuset be Dittay, of the slauchter of the said vmq^{le} Dauid Grahame, denyis the samyn, with the hail circumstances set down in the Dittay, concerning the said slauchter.

ASSISA.

Dauid Lyndfay, in Brechin,	Dauid Gairdin of Lawtoun,	Johnne Cob, citiner of Brechin,
James Ramfay, thair,	Patrik Guthrie of Kinblakmonth,	Williame Carnagy, skynner, burges
Johnne Vdny of Kethik,	James Halyburtoun, mercheand	of Edinburghe,
James Smyth, in Brechin,	burgess of Edinburghe,	Williame Ruthvene of Bandane,
Andro Thomesoun, thair,	Johnne Peter, wryter, burges thair,	Williame Elder, tailzeour, burges
Johnne Anderfoun, burges of	Laurence Heiring, brother to	of Edinburghe.
Montrois,	Lethindie,	

VERDICT. The Assyse haifing reffonit and voittit vpone the pointis of the said Dittay, and being ryplie and at lenth advyset thairwith, togidder with the Letteris of Hoirning producet be his Maiesteis Aduocat, beiring the said Robert to haif bene denuncet rebell in Maij, 1616, for nocht finding of caution to haif compeirit befor the Justice to haif vnderlyne the Law for the said slauchter ; ffor the quhilk fact, he hes bene fugitiue and furth of the cuntrie senfyne ; togidder with ane Commissioun, and vther probatioun producet also be his hienes Aduocat, for instructing the said Dittay—thay all in ane voce, be the mouth of the said Johnne Vdny, chancellor, fand the said Robert to be FYLET, culpable, and convict of the said Slauchter.

SENTENCE. To be tane to the Mercat-croce of Edinburgh, and thair his heid to be strukin frome his body ; and all his moveabill guidis to be efcheit, &c.

Intercommuning with the Clan-Gregor.

Mar. 18.—COLENE BRUCE, sumtyme duelland in the Middilhauch of Huntingtour.

Being brocht furth of the Tolbuth or Waird-hous of Edinburgh, quhairin he hes bene wairdit thir dyuerse monethis bygane, and presentit vpone pannell, be directioun of the Lordis of Secreit Counfall, to heir and sie the dome vnder-writin pronuncet aganis him, as he that became in his Maiesteis will ofbefoir,

ffor the affisting, reffett, fupplie, and intercownoning with THE CLANGREGOUR; and accoirding to his Maiefteis will than publeift and declairit, vpone the faxt day of Auguft, 1605, was ordanit to be Banifchet his Maiefteis haill dominiones, nevir to be ffund agane within the famyn, vnder the pane of deid, for the faid cryme.—(See this Collection, II. p. 457.)

SENTENCE. The Juftice of new agane, conforme to ane Warrant and delyuerance of the Lordis of Secreit Counfall, fubferyuit be my Lord Chancellor, and be my Lord of Mar, Grit-Thesaurer, daitit the xvij day of Marche instant, Ordanit the faid Colene Bruce to be Banifchet, as of befoir, his hienes haill dominiones, and nevir to be fund within the famyn, vnder the pane of deid, but forder fauour: Lyk as, to be returnet bak agane to the faid waird be the Magiftratis of Edinburgh, to be keipit be thame thairin, in fure firmance and captiuitie, vnto the tyme a Schip be prepairit, quhairin he may be tranfpoirtit.

Slaughter at a Funeral.

Jun. 10.—JOHNNE JOHNNESTOUN of Tunnergathe; Blench Bell, his fpous ('*paft fra'*'); Johnne, *alias* Jok, Williame, ffances, and James, four fones to the faid Johnne; James Johnneftoune; Andro Johnneftoune, in Kirktown; Williame, ffancie, and George, his thre brether; David Bell, callit of Craighous; Williame Johnneftoune, in Hilbank; Johnne, his brother; Williame and Johnne Johnneftoune, in Schaw; Williame J. in Hilbank; Johnne, his brother; James Johnneftoun, in Hill ('*paft fra'*'); Patoun Bell, in Yle ('*paft fra'*'); Jok Burges, in Kirkhouffes ('*paft fra'*'); Jok Johnneftoune, in Foulraw ('*paft fra'*'); James Johnneftoune, fone to Twnergathe; ffances J. in Myreheid; James J. in Court; James Bell, in Twnergathe ('*paft fra'*'); Johnne Bell, in Holmheid ('*paft fra'*'); George Johnneftoune, fone to Johnne Johnneftoune of Twnergathe.

Dilaitit of airt and pairt of the Slauchter of vni^q^{le} Frances Johnneftoune, brother-germane to Williame Johnneftoune of Lockerbie; committit vpone the xxj day of Apryle laft, at the Buriall of Thomas Johnneftoun, 5ounger of Fingland, befyde the Kirk of Twnergathe, and 5aird thair of.

PERSEWARIS, Williame Johnneftoune of Locherbie, brother; Sir Williame Oliphant, kny^t.

James Johnneftoun of Waftrow became fouertie for the entrie of James of the Hill, the thrid day of the nixt Juftice-air of the fcherefdome quhair he duellis; or foner, vpone xv dayis wairning.—Johnne J. of Twnergath, fouertie for the entrie of Patoun Bell, Jok Burges, Jok J. of Foulraw, and James Bell of Twnergathe.—And Johnne Carmichell in the Maynes, fouertie for the entrie of Johnne Bell in Holmeheid.

THE JUSTICE, of consent of the perfewaris, continewis this dyet aganis the remanent personis nocht paft fra, to the fevint day of Auguft nixt; and Ordanis thame to find fouertie for thair entrie that day.

James Gordoun of Buithill, brother to Lochinvar, fouertie for the entrie of

Johnne of Twnergathe and his fones—Johnne of T. fouertie for Frances of Myreheid, &c.—Johnne Gordoun of Hiffilfeild, for Andro J. in Kirktown, &c.

(Aug. 7.)—The Justice, of consent of pairtie, continewis this dyet to the xvij of November nixt.—Niniane Johnnestoun of Powdene, cautioner for Twnergathe and Andro J. of Kirktown—and thay, conjunctlie and severallie, for the entrie of the remanent perfonen.

(Nov. 18.)—Continued to the thrid day of the nixt Justice-air of Dumfries, or foner, vpon xv dayis wairning.

Slaughter at a Funeral.

Jun. 10.—JAMES JOHNNSTOUN of Wastraw; William J. of Locherbie; Archibald, his brother; Nicolas Cairleill, spous to the said Williame ('*past fra'*'), and others.¹

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Andro Johnnstoun, sone to Johnne Johnnstoun of Twnergathe; and Slauchter of vmq^{le} Johnne J., brother-germane to Andro J. of Kirktown; committit the xxj day of Apryle last, within the Kirk-5aird of Tounergathe, at the Buriall of Thomas Johnnstoun, 5ounger of Fingland.

PERSEWARIS.

Sir Williame Oliphant of Newtoun, kny^t, Aduocat to our fouerane lerd; Johnne Johnnstoun of Twnergathe, as father to the said vmq^{le} Andro; Johnnstoun of Kirktown, as brother to the said vmq^{le} Johnne.

The same procedure takes place in this case as in the preceding; and is finally, on Nov. 18, continued to the Justice-air of Dumfries, &c.

Rape—Forcing and shamefully Abusing, &c.

Jun. 17.—MR DAVID WEDDERBURNE, indueller in Dundie, and Andro Crystie, indueller in Leith.

¹ The other pannels follow :—Mungo Johnnstoun, sone to the said Williame; Williame J., brother-sonne to the said Williame of Locherbie; Andro Chalmer, in L. ('*past fra'*'); Johnne C. and Andro C., his tua fones, thair ('*past fra'*'); Williame Brydane, in Gymmenbie ('*past fra'*'); Mathow Brydane, thair ('*past fra'*'); Heekie Johnnstoun, thair ('*past fra'*'); Andro Grahame, in Locherbie; Williame Grahame, in Westwoid ('*past fra'*'); Hercules Johnnstoun, in Locherbie; Margaret J., wedow, in Nitholme ('*past fra'*'); Williame Kennedie, 5ounger of Hallaithes; Johnne K. of Hallaithes ('*past fra'*'); Johnne Chalmer, in Studrigis ('*past fra'*'); Thomas Harknes, oistler in Locherbie; Johnne Johnnstoun of Turmour, callit of Locherbie; Dorathie J., his spous ('*past fra'*'); Andro J., his eldest sone; Andro J., brother to the said Johnne of Twrmour; Williame J., also his brother; Johnne Bell, his servand ('*past fra'*'); Thomas J. of Fingland; Johnne J. in Burfs, callit of Fingland; Johnne J., callit *Gavinis Johnne*; Gib Mundell, in Lairdholme ('*past fra'*'); Adie Blaikklok, thair, callit of Birkkay ('*past fra'*'); Hercules J., callit *the Bastard*, in Locherbie; Johnne J., sone to Williame J. of Auldwallis ('*past fra'*'); George J. in Mylnebank; Johnne J., sone to David J. of Cleuch-heidis; Mungo Kennydie in Astork; Andro Irwing, alias Myller, in Wylielohill ('*past fra'*'); Mathow Thorbrand, thair ('*past fra'*'); Williame T., thair ('*past fra'*'); James Grahame, in Quhytestanehill ('*past fra'*'); Thomas Manekltoun, in Midge-bray ('*past fra'*'); David M., thair ('*past fra'*'); Symone Hall, thair ('*past fra'*'); Johnne Corrie, in Preistbuttis; Gawin Smyth, thair; Thomas Johnnstoun, callit *Geordeis Thome*, thair; Johnne Kennydie of Hallaithes ('*past fra'*')

Dilaitit of the Foirceing and schamefull abusing of Jonet Crambie, dochter to vmq^{le} George Crambie, burges of Bruntieland, and Jonet Broune, hir mother; committit within the dwelling-houſe of Alexander Anderſone in Bruntieland, vpon the xxvj day of Marche laſt.

PERSEWARIS.

Jonet Brown, as mother to the ſaid Jonet Crambie; Sir Williame Oliphant of Newtoun, kny^t. PRELOCOUTOURIS in defence, Mr Thomas Nicolfoun, Mr Vmphra Blindſchell, Mr Johnne Ruſſell.

It is allegit be the pannell and thair prelocoutouris, that na proces can be grantit in this matter, nather can thai (bē) put to the knowlege of ane Aſſyſe for the cryme lybellit; becaus the ſaid Jonet Crambie, ſpeciall pairtie perſewar, to quhome the allegit cryme is done, is nocht preſent to perſew thame for the ſamyn.—It is anſwerit be my lord Aduocat, that the allegiance aught to be repellit, in reſpect that the mother is preſent, and is reddie to perſew, quha is ſufficient; or ony of the kyn and freindis to perſew, with concurrence of his Maieſteis Aduocat.—It is replyit be the pannell, that the mother is only for her (awin) intereis; quha can nocht perſew thame for the allegit cryme, t pairtie allegit offendit being on lyfe.—It is anſwerit, that the allegiance aucht to be repellit, in reſpect of the former anſwer.

The pannell deſyres the mother to be ſolemmelie ſuorne, vpon the verritie of the Dittay, befor thai cum to thair defence.—The mother reſuſes to geve her aith vpon the Dittay, as it is qualifeit, in reſpect ſcho was nocht preſent; bot declairis that hir dochter paſt ſaif and haill furth of hir hous; and come bak agane to hir hous ſchamefullie abuſet, &c.; quha than repointit to hir that ſcho was forcet be the pannell, in maner ſpecifeit in the Dittay.—The pannell takis instrumentis, that the mother reſuſſing to ſweir; and proteſtis for remeid of law, for thair ſchamefull ſclander.

THE JUSTICE Ordanis the pannell to find caution for thair compeirance the thrid day of the nixt Juſtice-air of the ſcheref dome quhairin thai duell,¹ or ſoner, vpon xv dayis wairning, to vnderly the law for the ſamyn, vnder the pane of I^m merkis for ilk ane of thame.—Mr Johnne Elphinfoun, indueller in Leith, become ſouertie for the ſaid Andro, vnder the pane of I^m merkis. Andro Watſone, bailzie and burges of Bruntieland, become ſouertie for the ſaid Mr David, vnder the ſaid pane.

Slaughter.

Jun. 20.—JAMES STEWART, ſone to vmq^{le} Johnne Stewart of Kilpatrik.

Dilaitit of the cryme following, viz. fforſamekill as, he haifing conſauet ane deidlie ſſeid, rancour, and malice aganis Andro Cuninghame in Belliemichell, in

¹ Forfar and Edinburgh.

Arrane, in the moneth of Maij last, come bodin in feir of weir,¹ with ane fuord and vther wappones, *inuafue*, to the saidis Landis of Belliemichell, of purpois to haif darnet² himself in the brome,³ neir to the said Androis hous, thair to haif murthouret him: In his cuning to the quhilk brome, being espyit be ane Jerveise, fervand to the said Andro, quha was addressling him self in to the said Androis hous, to geve him adverteisment of the said James being thair; the said James followit the said Jerveise, and befor he could cum to his maisteris hous, ouertuik him, and with ane fuord strak him in the bellie, and flew him thairwith.

The pannell confesses the Slauchter of Jerveis; and offeris to satisfie the pairtie and the Kingis Maiestie for the samyn, seing nane perfewis him bot his Maiesteis Aduocat, for his hienes intreis.—The Aduocat takis instrumentis of the pannellis confessioun of the cryme.

VERDICT. The Assyse, be the mouth of Mr Donald Campbell, chancellor, all in ane voce, in respect of the said James Judiciall Confessioun, stand and declairit the said James to be fflyet, culpable, and convict of the Slauchter of the said vmq^{le} Jerveis.—SENTENCE. To be tane to the Castle-hill of Edinburghe, and thair his heid to be strukin frome his body; and his haill guidis and geir to be escheit, &c.

Thett.

Jul. 2.—GILBERT ELLOTE, callit *Gib the Galzart*.⁴

Dilaitit of the thiftious steilling of ane purse fra Johnne Airmeistrang, callit of the Holme, vnder silencè and clud of nycht, within the duelling hous of Alexander Young in Selkirk, in the moneth of Maij last, be taking the said purse, with ffourtie pundis being thairin, furth of the said Johnne Airmeistrangis breikis, in maist thiftious maner; and drinking of ten merkis of the money that was thairin; and abstracting the rest of the ffourtie pund, vnto the tyme the samyn was challanget vpone him, and restoirit bak agane thaireftir to the said Johnne Airmeistrang, awner thairof.

The pannell declairit that he nawayis staw⁵ the purse, in maner spacificit in the Dittay; bot allanerlie, that he being in Alexander Youngeis hous, in Selkirk, ryseing in the moirning, stand the purse vpone the flure of the chalmer; quhilk he retenit, and spendit of the money that was thairin ten merkis allanerlie,⁶ in recompance to the faiffer;⁷ and restoirit the said purse, with the rest of the money

¹ Furnished in warlike manner.

² Concealed; hidden.

³ Broom; *planta genista*.

⁴ ‘Willame Johnstone of Wamphray, called *the Galliard*, was a noted freebooter. His *nom de guerre* seems to have been derived from the dance called *the Galliard*. The word is still used in Scotland to express an active, gay, dissipated character.’—*Border Minstrelsy*, i. 230. It is right, however, to inform the reader, that this *sobriquet* was very prevalent on the Border.

⁵ Stole.

⁶ Only.

⁷ Salvage money, and for restoring what was lost.

being thairin, to the said Johnne Airmstrang, sa fone as he vnderstuid the samyn pertenit to him; affirmeing, that the said Johnne Airmstrang wald nawayis insist aganis him for Thift.—The Aduocat anfuers, that his Declaratioun maid can nocht be respectit; bot he fould be put to ane Assyse, in respect of his depositioun maid be him, in presens of the Justice, confessing the steilling of the purse and money thairintill, in maner specifeit in the Dittay.

The Justice Ordanis him to pas to ane Assyse, nochtwithstanding of his former allegiance and Declaratioun maid be him thairintill.

VERDICT. The Assyse, be the mouth of Johnne Scott of Sundelishoip, chancellor,¹ for the maist pairt, ffind, pronuncet, and declairit the said Gilbert to be ffylet, culpable, and convict of the away-taking furth of Alexander Youngis hous in Selkirk, of the said Johnne Airmstrang his purse, with ffourtie pundis being thairintill; quhilk purse was delyuerit bak agane to the said Johnne, and haill fowme aboue specifeit, except ten merkis thairof allanerlie: And Clanges him of the steilling of the samyn.—SENTENCE. To be SCURGET throw the burgh of Edinburgh; and also to be actit to be Banischet furth of this realme, and neuer to be ffind agane within the samyn, without his Maiesteis Licence, vnder the pane of deid, but fauour.

The said Gilbert actit himself to depairt furth of this realme, within xx dayis eftir the dait heirof; and nevir to be ffind agane within the samyn, without his hienes Licence, vnder the pane of deid.

Murder.

Jul. 8.—JOHNE MENZEIS and Andro Menzeis, brether to Williame Menzeis of Castelhill; Raulff Dalzell at the mylne of Durisdeer, James Barbour in Colymme, Hectour M^cQuhynzie in Thornehill, Jonet M^cRone, spous to Johnne Williamfoun in Dufdeir, Johnne Williamfoun hir spous for his intreis, Marioun M^cRone, sister to the said Jonet.

Dilaitit of airt and pairt of the crewall Murthour and Slauchter, vnder nycht, of Patrik Douglas, fone to Hew Douglas of Balliebught; committit the fyftene day of Marche last, at the gavill of the said Johnne Williamfounes hous, in Dufdeir, in his ganging furth of the toun of Dufdeir to the place of Moirtoun.

PERSEWAR, Hew Douglas of Belliebucht, Sir Williame Oliphant, kny^t.

PRELOCUTORIS in defence, Mr Thomas Nicolfoun, Mr Lucis Stewart, James King.

THE Justice, with consent of my Lord Aduocat, continewis this matter to the thrid day of the nixt Justice-air of the Scheref dome of Dumfreis, or soner vpone fyftene dayis wairning; and ordanis the pannell to find Cautioun for thair re-entrie to that effect.—The Laird of Dalzell, elder, and Williame Menzeis of

¹ The remainder are merchants and burgesses of Edinburgh.

Castelhill, become pleges for Johnne and Andro Menzeis—and Robert Douglas of Cafchogill for the entrie of Hectour M'Quhynzie.

Slaughter—Demenbration.

[THE Case which follows, affords one among numerous other instances, of the unhappy consequences resulting from the deadly feuds, which occurred almost daily; and strongly points out their prevalence in Scotland, to a very lamentable extent. *Sir James Balfour*, in his *Annales*,¹ states, that '*the Young Laird of Culmalindie-Bruce*, in Perthshyre, killed *Tofchoke Laird of Minervaird*, sister sone to *Sir James Campbell of Lawers*, in the toune of Perth. *Culmalindy*, the committer of the slaughter, fled.' But *Fleming*, in his MS. Diary or Chronicle,² gives a much more minute detail of this affair, in the following passage, extracted from the Original MS. :—'Vroun Midfomer-day, the xx of Junij, 1618 yeiris, at twa efternoon, (*David*) *Tofcheoch of Monivaird* younger slaine in the South-gait of Perth be *Lourence Bruce younger of Culmalindeis*, his brother, and diuers thair affociates. The twa that was with *Monyvaird*, the ane deidlie hurt, bot deit not; the vther, his richt hand clene strukin fra him. This done in a moment of time. All the committeris thair of eschewit out of the towne, befor any of the townis-men hard of ony fuche thing.']

Jul. 29.—PETER BLAIR, brother-germane to Andro Blair of Gairdrum.

Dilaitit of airt and pairt of the ffelloun and crewall Slauchter of vmq^{le} David Tofcheoche, 3ounger of Monyvaird; and Demenbring of David Malloche, his feruand, of his richt hand; committit within the burgh of Perth, vpon the xxiiij day of Junij last.³

The said Andro (as cautioner for his brother) nocht compeirand nor enterand the said Peter, the Justice ordanit him to be in ane amerceament and vulaw, viz. tua hundreth merkis: Lyk as, the said Peter was decernit, for his nocht compeirance, to be denuncet rebell and put to the horne, and all his moveabill guidis to be escheit, &c.

Slaughter—Demenbration.

Jul. 29.—LAWRENCE BRUCE, appeirand of Culmahundie; Alexander Bruce, his brother; Williame Oliphant of Gask; Laurence Oliphant his brother; Alexander Fleming of Moneis; Williame Douglas of Annatroche; Johnne New, fervand to my Lord Oliphant; Donald Paterfone, fervand to the Maister of Oliphant, and George Tyrie, messinger in Perth.

Dilaitit of airt and pairt of the above slaughter, &c.

Eduard Tofcheoche, elder of Monyvaird, as ffather o vmq^{le} David Tofcheoche, 3ounger of Monyvaird, produced the Letters deulie execute and indorsate vpoun Peter Blair, brother-germane to Andro Blair of Gairdrum; be vertew quhairof the saidis Laurence, &c. ar denuncet rebellis and put to the horne, for nocht

¹ Orig. MS. Adv. Library.
1618, Nov. 17, 1619, Mar. 12, 1623.

² Orig. MS. preserved in Adv. Library.

³ See Dec. 4,

finding of caution for their compeirance this day and place, in the hour of caus, to haif vnderlyne the law, &c. Vpoun the production of the quhilkis Letteris, the said Eduard, with Archibald Campbell, brother to the Laird of Laweris, askit instrumentis; and Protestit for releif of George Bifchope of Orkney, cautioner.

Slaughter.

Jul. 29.—ALEXANDER HERVIE in Innerrowrie.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} George Robertfone, fervand for the tyme to Patrik Con of Auchry; committit within the duelling hous of Thomas Chalmer in Turray, in anno 1599 yeiris, be streking him in the bellie with ane knyfe, quhair of he deceift.

PERSEWAR.

Alexander Soure, as brother on the mother fyde, and fervand for the present to the Laird of Skeane.

PRELOCUTORIS in defence.

Frances Erle of Errole, The Erle of Rothies, The Laird of Balquhane, (Johnne Leslie,) Mr Thomas Nicolfoune, Aduocat.

The persewar, with Mr Andro Skene, producet Hoirning aganis the pannell, quhairby he is denuncet vpone the xxv of Julij instant, for nocht finding of caution to compeir this day to vnderly the law for the said cryme; and thairupoun askit instrumentis, and protestit for his cautioneris relief, in respect na repourt was maid to the officer, of the finding of ony caution, quhairby ane Assyse mycht haif bene summond.—The pannell takis instrumentis of his entrie, and protestis for his cautioneris releiff: And as to the Hoirning producet, allegis the samyn is null, in respect caution was fund be him for his compeirance lang befor his denunciatioun, viz. vpone the xxij day of Julij of befor: And as concerning the Slauchter lybellit, he offeris him self to the tryell of the Law for the samyn, as altogidder innocent thairof, disassenting to all maner of continuatioun; and thairupoun askit instrumentis.

THE JUSTICE continewis this dyet to the secund of December nixtocum; and Ordanis the pannell to find caution for his entrie that day, vnder the panes content in the Actis of Parliament.

The pannell, for obedience of the Justice ordinance, ffand Jonnne Leslie, ffear of Balquhane, cautioner for his compeirance befor the Justice or his deputis, the saidis day and place.—The said Alexander Hervie being suorne, maid fayth that he dred¹ bodelie harme of Alexander Soure (Sowre), infasar as he had affirmet, in presens of dyuerse famous² persones, that ‘ gif he gat nocht his intent befor the Justice, that heould wair³ his mother sone vpone him also !’ And thair-

¹ Dreaded; feared. ² Persons of good fame and credibility.

³ Literally, expend; i. e. that

he would hazard his own life in his endeavour to be revenged of him.

foir, defyret Lauborris of him.—The said Alexander Soure declairit he had na cautionne, becaus he was bot ane pur man; and offerit *cautionem juratoriam*.¹

THE JUSTICE Ordanit him ather to find cautionn and lauborris for the indemnitie of the pannell, vnder the pane of ij^c merkis, or ellis to be tane to waird, to remane thairin quhill cautionn war fund.

Compeirit Mr Andro Skeane, and become fouertie and lauborris for the said Alexander Soure, that the said Alexander Hervie fall be harmeles and skaythles of him in his perfone, landis, and guidis; and nawayis to be molestit or trubillit be him thairin, nor be na vtheris of his causing, &c. vnder the pane of tua hundreth merkis.

(Jul. 30.)—Alexander Gourlay of Southane, in Fyfe, become plege, fouertie, and lauborris for Alexander Sowre, &c. Mr Andro Skeane relieved.

(Dec. 2.)—THE JUSTICE, in respect name of the Affyse compeiris, continewis all tryell in this matter to the thrid day of the nixt Justice-air of the Scherefdom of Aberdene, &c.—Johnne Leslie, fear of Balquhane, become fouertie and lauborris for the said Alexander Hervie, that the said Alexander Sowre fall be harmeles and skaithles of him, &c. vnder the pane of foure hundreth merkis.

Stealing of a Purse.

Jul. 30.—JOHNNE BROUNE.

Dilaitit of the steilling of ane purse, with xxij li. being thairin, in Carnewath mercat, vpone Mydsomer-day last, quhillk pertenit to James Walker, cordiner in Lynlythgow; and he being schortlie thaireftir challenget, made restitutionn of the said purse and money bak agane to the said James.

VERDICT. Convict of the steilling of the said purse.—SENTENCE. To be Scurget throw the burgh of Edinburgh, and Brunt² vpone the cheik: And to be Banisheit his Maiesteis haill dominiones, speciallie this his kingdome of Scotland; nevir to be fund agane within the samyn, vnder the pane of deid, but³ fauour.

Forging of an infamous Pasquil against the Scottish Nation, &c.

[THE Case of Mr THOMAS ROSS forms one of a series of sanguinary and barbarously vindictive acts of KING JAMES VI, which, unquestionably, must leave an indelible stain on his memory and character, as a despotic and cruel tyrant. It has already been frequently shown, in the course of this work, that whenever there occurred the slightest attack on his personal dignity, or any speech, lampoon, or other writing, at all infringing on his kingly prerogative, &c. his Majesty was relentless in the severity of the punishment, which he never failed to cause be inflicted on the luckless offender. As so many shocking Cases of this description have already been given in the present Collection, it is enough, without fatiguing the reader with any recapitulation, barely to refer him, among other cases of a

¹ Juratory caution.

² Burnt; branded.

³ Without.

similar nature, to the Trials of *Dikson*,¹ Aug. 3, 1569; *Tennent*,² Oct. 10, 1600; *Cornwall*, Apr. 25, 1601; and *Fleming*,⁴ May 17, 1615; which are the leading instances of the insane and blood-thirsty spirit above alluded to.

With regard to the facts attending the case of Mr Thomas Ross, there seems to be no reason for doubting that they occurred almost exactly as they are narrated in the abstract of the Dittay, which has been preserved in the Books of Adjournal. In case, however, that this example should prove infectious, the Record informs us, that the offensive papers were ‘gevin vp agane to my lord Adnocat,’⁵ to be destroyed—‘as nocht worthie to remane in ane Register, to offend the earis or eyis of the posteritie!’ Every search has been made in the *Deumylne Collection* of MSS., and other Collections in the Advocates’ Library, the Warrants of the Privy Council of Scotland, and other similar sources, but no trace can now be had of the *Theses* and *Annexa*, which must have proved very interesting and curious at this distance of time.

In order that the reader may have an opportunity of judging for himself, the Editor has made every enquiry in his power, for the purpose of elucidating this disgraceful and sanguinary page of the personal history of ‘the British Solomon.’ Sir James Balfour⁶ gives the following account of this extraordinary tragedy. “THE 20 of August, this 5eire, Mr Thomas Rosse, a brother of the Houffe of Cragie, in Perthshyre, was sentenced by the Justice-Generall to losse his head,⁷ at the Croffe of Ediubrughe; and thereafter, the same head to be affixed one the jayle—for propofunge certane villanous and opprobrious Thefes, in defamatiōe of his anen natiue countrey and countreyemen, and affixing them on a Church-dore, in Oxford, before fermon, one a Tuefilay; offring them to be publickly dispute, and himfelue (miferable wretche!) to defend them. This sentence was put in executione within 2 dayes thereafter.”⁸—Another authority⁹ narrates the proceeding thus. “MR THOMAS ROSS, Minister at Cargill, having been convicted by an Affize, at Edinburgh, of writing, at Oxford, in England, against the Scots Nation, was executed at Edinburgh.¹⁰ His right hand was first stricken off; thereafter, he was beheaded, quartered, and put upon the Ports. He was of the House of Craigie, being a son of John Ross, Laird of Craigie, and went to Court. He wrote very unnaturally, and whereof he was not wise, against the Scots Nation. He was conveyed to Scotland in a ship. Mr Thomas Ross was insane, and his infirmity was pled in his defence. He affixed to the door of St Mary’s Church, in Oxford, a Latin Thesis, in which were ten propositions; wherein he attempted to prove, that the English ought not to allow so many of the Scots to remain among them. The King was ridiculously incensed, and instead of confining him, as one in his condition needed to be, he sent him to Scotland, along with strict orders that he should suffer death.”

It seems very singular, when all circumstances are considered, that so remarkable an occurrence has been entirely passed over in silence by *Spotswood* and *Calderwood*, in their Church Histories.

There cannot be a doubt that Mr Thomas Ross was a man of an ancient, influential, and highly respectable Family; and the Editor believes, that having embraced Episcopacy, he had gone to prosecute his studies in Oxford. It would appear, from the preceding notices, that Ross had previously

¹ See Vol. I. 385.

² *Ibid.* II. 332.

³ *Ibid.* II. 349.

⁴ *Ibid.* III. 359.

⁵ Sir William

Oliphant of Newton.

⁶ *Annales*, MS. Adv. Library—and II. 70, Edin. 1824.

⁷ “In September 1618, Mr Thomas Ros, sone to the Lard of Cragie, wes, for vreting, at Oxford, in Ingland, aganis the Scottis nationn, being send to Scotland be schip, convict be ane Assyse, his richt hand first stricken off, thairefter beheadit.”—MS. Adv. Library.

⁸ An obvious oversight of Sir James Balfour, who had probably noted down the day of his intended execution—omitting to rectify the date, after the King’s Warrant had been received.

⁹ The Rev. James Scott’s transcript of the *Diary or Chronicle of John Mercer*, who was appointed Town-Clerk of Perth, Oct. 6, 1623, and lived to a great age. Orig. in Adv. Library. The Editor has the pleasure of notifying, that this interesting Diary is preparing for publication by his friend James Maidment, Esquire, as his contribution to THE Maitland Club, the Members of which have chiefly directed their attention to the printing of Historical works illustrative of Scottish affairs.

¹⁰ “2 Sep. 1618. MR THOMAS ROSS, Minister at Cargill, went to Court; and thair, for sum infamous writtings, and railling aganes the Scottis Nationn, werie onnaturallie, being on of the sones of the Hous of Cragie; quhair of he wes not wyse. He wes headit in Ediubrughe, quaherit, and putt wpon the Portis.”—*Fleming’s (Mercer’s) Chron.* MS. Adv. Library.

been *Minister of Cargill*; and as he is so designed in these accounts, it is likely that he had not been deprived of his living before the period of his execution. The conduct of KING JAMES in the whole of this matter, and his barbarous treatment of *Ross*, become altogether inexplicable, when it is considered, that at this very time, he was struggling to force Episcopacy upon the people of Scotland, as the permanent and established Religion of the country. In such circumstances, it seems strange indeed that he should have so rancorously pursued so zealous a convert to the forms and tenets of the Church of England, at the precise time that that person (a *Minister*, too, of the Kirk of Scotland) was doing every thing in his power to qualify himself for effectually pleading and maintaining the establishment of Episcopacy—a measure so near James's heart. *Ross*, however, had, for the indulgence of some mad and absurd frolic, written the Pasquil or Thesis in question, and affixed it to the Church-door of *St Mary's, Oxford*, as was then usual at all the great Universities in Europe, where public disputations were often held.¹ It was pleaded by the unfortunate man, that he had done so in a fit of *insanity*, which seems to have been credited by his contemporaries;—but all these circumstances combined, could not induce the King to save his life; on the contrary, they only inflamed his rage the more against poor *Ross*.

The only thing which can be urged in palliation of the rigorous sentence, which the King insisted on being put in execution, is, that at the time when KING JAMES succeeded to the English Throne, and for a long time after, the Scotch were peculiarly unpopular in England, and such swarms of needy adventurers had travelled southward, that not only were the greatest jealousy and hatred manifested on the part of the English, but it actually became necessary that a legislative enactment should be made, to prevent bloodshed and scenes of violence throughout the country. As remarkable instances of the rancorous feelings which existed against the Scotch, a curious passage may be cited from *Calderwood*,² which forcibly illustrates the state of the public mind, in England, upon this subject.—‘THE SCOTISHMEN lying at Court were in danger of their lives, be reafone of the great malice of the English conceived against them. *Sir John Ramfay's* brother smote the *Lord Montgomeries* brother on the face, with a rod, for a lie given him at a Horse-race. There were present about ane hundreth Scottish-men, all in danger to be maffaced, if the English had not been stayed by a Counsellor. *James Maxwell*, one of the Gentlemen of the King's Chamber, pulled ane Englishman's eare till it bleade. Oure countrymen durst not repair foe frequently to the Exchange or Comedies as they did before. The *Lord of Kinloffe* was in great danger at a Comedie, but was convoyed secretly away be ane aged gentleman, who was weill acquent with his father. This lybell was affixed in open places,—

‘THE SCOTS DOE WHIPPE OUR NOBLEMEN WITH RODS—THEY KILL OUR FENCERS TRATROUSLY UNDER TRUST.’

‘The *Lord Sanquhar* indeid hired two Scottishmen to kill ane English fencer, who, fix or seven years before, had putt furth his eye at fencing! They killed him in an Inn, whilles he was putting the cupe to his head. To content the English, the King consented that *Sanquhar* should be hanged. For the greater contempt of our Nobility, he was hanged among a number of Theeves!’

It is barely possible that the King may have discovered certain indications at Court, which, in a manner, forced him to sacrifice *Ross*, for the purpose of checking in the bud any future attempts at

¹ It may be esteemed worthy of remark here, that a shadow of this ancient custom is still observable at the Scottish Bar, where, previous to the inauguration of each candidate for admission into the body of the Faculty of Advocates, a *Thesis*, with its *Annexa*, is publicly notified on the walls of the Parliament-House—and especially at the outer-door of that Hall. It intimates that a public disputation, “*Disputatio Juridica*,” is to be held on a certain day, under the auspices of the Dean of Faculty; and the subject-matter of the *Thesis* is thus notified. Originally, the candidate had stontly to maintain his ground against all comers, in the Latin tongue. It is almost unnecessary to add, that this *Disputatio Juridica* has now degenerated into a piece of empty form; in point of fact, it is “elegantly understood”—as no disputation whatever takes place, excepting that which is apt to arise with the printer and book-binder, who are the only parties at all benefited by this edifying solemnity. It is high time that such an useless waste of money should be prevented—and the sum at present bestowed in this way appropriated to the support of the splendid Library under the charge of the Faculty.

² *Church History*, Adv. Library, MS. ad ann. 1612.

fomenting these national jealousies. This, however, is merely matter of conjecture, and the only plausible apology which can be adduced for the perpetration of so tyrannical an act.

A very extraordinary instance of the same insane rage upon the part of the King, we learn from a rare Poem, entitled, a 'Counter-buffe to Lyfimachus, Junior, calling himself a Jesuite;' quarto, 1640, pp. 16;¹ where the fate of STERCOVIUS, a Pole, is alluded to. That stranger had unhappily appeared in Scotland in the dress of his native country, which attracted the attention of the idle, and brought down upon him the derision and abuse of the populace.

' Hither he came, clade all in antique fort,
Where seen in streets the subject of a sport,
He soone became to childish gazers, who
With skriecks and clamours his him to and fro,
Till forced he was with shame and speed to pack him,
And to his feet and loathsome cabin take him !'

Nettled at such rude and inhospitable treatment, he published 'a Legend of Reproaches' against the Scottish Nation, shortly after his return home; which, having reached the ears of his 'most sacred Majesty,' he procured the *arrest and execution* of the hapless STERCOVIUS! This out-herods Herod, with a vengeance! The death of this Pole was accomplished at an expense to the King of no less a sum than *six hundred pounds sterling*—an immense sum in those days. The instrument whom JAMES employed was one *Mr Patrik Gordon*,² a subject of Scotland, then resident in Poland. With a dexterity for which the sapient James was celebrated, he attempted to extort the price of this innocent man's blood from the *Royal Burghs of Scotland*! It is believed, however, that he was foiled in that attempt, by the Privy Council declaring themselves incompetent judges of the matter.³

In a very curious Collection, privately printed at Edinburgh, 1828, 'A Third Book of Scottish Pasquils,'⁴ the cases of *Ross* and *Stercovius* are particularly noticed; and a copious extract from the 'Counterbuffe' is there given. That singular Poem introduces *Ross's* story thus—which is enough for our present purpose.

. . . . ' A Scot of ancient race,
A scholler, too, as thou art, lived a space
In England's Court; and for some private hate,
A Pasquill did against his country wreat,
As thou hast done in fouler fort; more full
Of vild aspersions from thy phrantick skull!
Well, then, King *James* of lasting memorie, who
Could not brook that any calummie
Should be asperst upon his native land—
After some tryall there, he gave command
The Lybeller should home go, and sustaine
Of doome unpartiall laws th' unpitied paine.
And here being tryed, judged, and adjudged, they fand
That he should lose his head and faultie hand;
Which straight was done, in public view—and so
I thinke the matter with thyself will go !'

THE FAMILY OF ROSS OF CRAIGIE, near Perth, were probably a branch of the Family of the ancient *Earls of Ross*, and were reckoned among the most respectable Families in the shire. Many

¹ A copy is in the valuable Collection of David Laing, Esquire. ² Probably the author of the 'History of the Valiant Bruce,' in heroic verse. Dort, 1615; quarto. ³ See Decreet of Lords of Privy Council, in *Charter-room of the City of Edinburgh*. ⁴ Prefatory Notice, xii. The two preceding 'Books' bear date, 1827, and 1828.

particulars concerning them are to be found in History so early as the reign of Robert Bruce, and in the records of the Religious Houses at Perth, to which they were benefactors. *Nisbet*, in the Appendix to his second Volume,¹ gives a list of some of the distinguished Families in the Kingdom to whom they were allied.²

It cannot be disguised, that however honourably born this family may have been, various members of it figured in Books of Adjournal, and others of them suffered the last punishment of the Law, for their crimes. JOHN ROISE of Craigie, James and Williame Roise, his brothers, John Roise, servant to vmq^{le} James Roise in Maitlandis, Lancelot Moncrief, servant to the Laird of Craigy, were, along with William Lord Ruthven, Henry Lord Methven, and others, brought to the bar of the Court of Justiciary, Nov. 12, 1571, for Oppression, Hamesucken, Convocation of the Lieges to the number of two hundred armed persons, besieging the Place of Dupplin, &c.³ This appears to have proceeded entirely from one of those deadly Feuds which were unhappily so common in Scotland at that time. Their antagonist was Laurence Lord Oliphant. But the most atrocious instance which the Editor can at present recollect, occurs in *Fleming's Chronicle*,⁴ under date Apr. 8, 1608; where it is recounted, that 'PATRIK EVIOT, brother-german to the Laird of Balhousie, wes murtherit in Blelok be his wife, JONET ROSS, quha wes air to the Lairdship of Craigie and Kynfawnes, both. He wes schote with ane gun in his bed, sleiping, be James McNair. Thairefter, they wer both taikin and execute—and brunt, efter they wer hangit, in the Playfeild of Perth, the 17 of Maij, 1608. The heid and arme putt wp on the Castell-Gawill-Port.' It will be recollected how narrow an escape *Patrick Eviot*, the husband of *Jonet Ross*, had previously made, when he was attacked by Sir Henry Lindsay of Carreston.⁵

After the death of JONET ROSS, the heiress of Craigie, (who seems to have wished to transfer, by marriage, her large estates to her blood-stained paramour, *James McNair*,) her uncle, *Robert Ross*, succeeded to the Estate of Craigie. The Laird of Balhousie at this time was *Colin Eviot*. The Reverend Mr Scott informs us, that "*Patrick*, his brother, had suffered trouble and loss by a sentence of Parliament, for the friendship he had expressed to the Earl of Gowrie, in 1600. The *Eviots* had been proprietors of the lands of Balhousie and Muirton, near Perth, for more than three hundred years. They were great benefactors to the Religious Houses, especially to the Black Friars' Monastery, at Perth; and some of the younger sons of the Family were in Clerical Orders. *Colin Eviot* was succeeded by his son *Patrick*, who, before 1618, had sold the lands of Balhousie to *John Matthew*, and was himself designed *Patrick Eviot of Muirton*. He was married, and had children."

The reader's indulgence is requested for the minuteness and prolixity of this Notice; which, however, has proceeded from the Editor's anxiety to throw all the light in his power on so extraordinary a Trial.]

Aug. 20.—MR THOMAS ROISE, sone to vmq^{le} Johnne Roise of Craigie.

Dilaitit of the devillische and detestable fforgeing, ffsenzeing, blasphemous vttering, and by writ publictlie exposeing, of ane villaneous, infamous, and devillische Writt, all writtin with his awin hand, concerninge ane PASQUEILL or THESE; togidder with ten feuerall abhominable ARTICLES or APPENDICES, confirneing the samyn—that all SCOTTISMEN aucht to be schote^e furth of THE COURT OF ENGLAND, excepting his gracious MAIESTIE, his sone, and ane verrie few vtheris, and that the INGLISCHMEN ar nichtillie blindet, fylet, and disfaudet,

¹ *Nisbet's Heraldry*, App. to Vol. II., p. 23.

² See MS. Transcript of *Mercer's Chronicle*, before quoted, and noticed by the Reverend Mr Scott, Adv. Library.

³ See this Collection, Vol. I., p. 25.

⁴ Advocates' Library, MS.

⁵ See this Collection, Vol. II., p. 409; Feb. 1, 1601.

⁶ Ejected; thrust out by violence.

(althocht quik-sichtit vtherwayis,) that thay sould suffer sic ane vnprofitable and pernicious multitude and filthie aff-scourengis of people to radge and dominire within thair boundis and intrallis, &c.

My lord Aduocat producet the said Mr Thomas Roise Dittay, togidder with ane direction of the Counsell, vnder forme of Act, ordaning him to persew the said Mr Thomas for the crymes thairin contenit.

DITTAY against Mr Thomas Roise.

MR THOMAS ROISE, sone to vni^q^e *Johne Roise of Cragie*, 3e ar indytit and accuset, FORSAMEKILL AS, albeit it be expresse provydit, statute, and ordanit, be dyuerse Actis of Parliament, alsweill maid be his Maiestie as be his hienes progenitouris, of worthie memorie; speciallie, be the 43 Act of the secund Parliament of King James the first, intitulat, ‘that Liefing-makeris tynes thair lyfe and guidis:’ And siclyk, be ane Act maid be King James the secund, the 100 Act, contenit in the auld prentit Actis of Parliament, the foirsaid Act is ratifeit in all pointis, and Ordanit to be put in executioun in all tyme cuming; be the whilk, it is statute, ‘that Leafing-makeris fall tyne lyfe and guidis to the King, and be at his Will:’ As lykwayis, be the 134 Act of the aucht Parliament, haldin be his Maiestie, our darrest souerane, him selff, and his hienes Estaittis, in the moneth of Maij, 1584; and in the tent Parliament, haldin also be his Maiestie and his Estaitis, the tent of December, 1585, *articulo primo*, intitulat, ‘Authouris of sklanderous speiches or writtis salbe pwneischet to the deathe.’ Quhilkis Actis ar ratifeit and approvin in his Maiesteis fourtene Parliament, haldin the aucht of Junij, 1594: And be dyuerse vtheris Actis, alsweill maid be his Maiesteis selff as his Maiesteis progenitouris of renowned memorie, that all Liefing-makeris and telleris of thame, quhilk may ingender discord betuix the Kingis Maiestie and his people, quhair euir thay may be gottin, fall be chal-langet be thame that power hes, and tyne thair lyfe and guidis to the King; and that nane of his subiectis, of quhatfumeuir function, degrie, or qualitie, fall presume or tak vpon hand, privatlie or publictlie, in Sermones, declamationes, or familiar conferences, to vtter ony fals, sklanderous, or vntrew speiches, to the disdayne, reproche, or contempte of his Maiestie, his Counfall, and proceid-ingis; or to the dishonour, hurt, or preiudice of his hienes, his parentis, or progenitouris; or to meddle in the eßairs of his hienes and his estait, steiring vp his hienes subiectis to mislyking, seditioun, or vnquyetnes; and that nane presume or tak vpon hand, publictlie to declame, or privatlie to speik or wryte ony purposis of reproche or sklander of his Maiesteis persone, estait, or gouerna-ment; quhairby ony mislyking may be movet aganis his hienes and his nobilitie, and loveing subiectis, in tyme cuming; vnder the pane of death, to be inflictit vpon thame with all rigour: As the saidis Actis of Parliament in thame selffis

proportis. NOCHTWITHSTANDING quhairof, it is of verritie, that ye, the said *Mr Thomas*, in the moneth of Julij lastbypast, contrair to the tennour of the saidis Actis of Parliament, hes falslie, sklanderuslie, calumniousslie, dispytefullie, and devillischlie, within the toun of *Oxford*, in ENGLAND, fforget, ffenzeit, and blasphemousslie vtterit, and be writt exposet publictlie to be red and defendit be yow, (as ye affirme by your devillische writt,) within THE VNIUERSITIES OF OXFURD, CAMBRIDGE, PAREIS, and vtheris places mentionet in that villaneous, infamous, and devillische Writt; all writtin with your awin hand, in Latine, ane Propositoun or These, contening ten feuerall abhominable articles and (appendices), confirmeing the samyn, that all SCOTTISMEN aucht to be schote furth of *the Court of ENGLAND*, (excepteing his gracious MAIESTIE, his sone, and ane verrie few vtheris,) and that the INGLISCHMEN ar nichtilie blind, fylet, and dissauiit (althocht quik-sichtit vtherwayis) that thai sould suffer sic ane vnprofitable and pernicious multitude and filthie aff-scoureingis of people to radge and dominire within thair boundis and intrallis. To the quhilk Propositoun, ye haiff sett down and subioynet ten feuerall fals reasones, leasngis, and vntreuthis, for confermeing your devillische propositioun. (Quhilkis ten reasones ar repeatit in this place as ane pairt of your Dittay, bot purpoisslie omittit and left out heiroyf, as nocht worthie to remane in ane Register, to offend the earis or eyis of the posteritie.¹) The quhilk blasphemous, iniurious, sklanderous, and devillische propositioun, and ten reasones, as ye terme thame, subioynet be yow thairto, for confirmatioun thairof, all writtin with your awin hand, ar ffals and manifest leasngis and vntreuthis; and war affixt be yow (maist impudentlie, as ane liar and defamear of your countrie and natioun, nocht worthie to haif inioyit the naturall air thairof) vpone *the Marie-Kirk-dur* of the said VNIUERSITIE OF OXFURD, vpone ane Twislday, being ane preiching-day, in the said moneth of Julij last, as the people war dissolueing and skailling fra the fermone, and as *Doctour Godwene, Vice-Chancellour of the Vniuersitie of OXFURD*, was cuming out of the Kirk; to the intent the samyn mycht be publictlie red and disperfit amangift his Maiesteis subiectis of ENGLAND: Off plane purpois and intentioun thairby to haif steirit thame vp to the crewall, barbarous, and vnmercifull murdering, massacreing, and assasine of the hail SCOTTIS people, alsweill noble men and counsalouris as vtheris of the SCOTTIS NATIOUN quhatsumeuir, his Maiesteis guid subiectis and seruandis, attendantis vpone and about HIS MAIESTEIS royall persone in Court; quhilk could nocht haif bene-accomplischet without the extreme danger and perrell of HIS MAIESTEIS sacreid persone, his gracious QUENE, and of THE PRINCES hienes. In the doing quhairof, ye haiff

¹ (Marked on the margin,) 'Thir Thesis, with the argumentis or reasones subioynet pairto, ar gevin vp agane to my lord Aduocat.'

fforget, maid, and writtin innumerable leafingis, ffalfe, fklanderous, and vntrew speiches and wrytingis, quhilk mycht haif ingenderit discoird betuix his Maieftie and his guid fubiectis; to the difdane, reproche, and contempt of his Maieftie and his noble progenitouris and thair proceedingis, and of your natie countrie, nocht worthie to haif the name of ane borne fubiect thairin; and thairby, hes medlit with his hienes effairis, eftait, and gouvernement, maift ffalfie, barbarullie, and vnnaturallie; contravening thairthrow (ye being ane SCOTTISMAN, albeit vnworthie) the tennour of the Lawis and Actis of Parliament thairof, and incurring defervetlie the panes and pwneifchment aboue written, mentionet thairintill; quhilk aucht and fould, in maift exemplarie maner, be inflictit vpone yow, with all rigour; to the terrour and example of vtheris to attempt the lyk. Quhilk is mair nor nottour, and ye can nocht deny.

MY LORD ADUOCAT producet the faid Mr Thomas Roifs Dittay, togidder with ane direction of the Counsell, vnder forme of Act, Ordaning him to perfew the faid Mr Thomas for the crymes thairin contenit.

The faid Mr Thomas, eftir reiding of the Dittay, and his accusatioun of the crymes mentionat thairintill, acknowleges and confesses the famyn crymes to be of veritie; declairing that THE THESIS producet war writtin be him furth of ane mad and diftemperat humnour, being *inops mentis* for the tyme; quhilkis he now, from his heart, repentis; craueing God, his Maieftie, and hail cuntrie people¹ pardoun for that his offence: And offeris him selff in his Maiefteis will, being a gracious Prince, quhais Royall difpositioun, in all his proceedingis, hes ever inclynet rather to mercie, quhilk is the richt hand of God, nor² to the rigour of Justice, quhilk is his left hand: Defyreing thairfoir, in all humilitie, my lord Justice and Lordis of his Maiefteis Counfall present,³ to interceid at his Maiefteis handis, for fauour in his behalff.

My lord Aduocat takis instrumentis of the pannell his Judiciall acknowledge-ment and Confessioun of the cryme contenit in his Dittay.

THE JUSTICE findis the Dittay relevant, and Ordanis the famyn to be put to the knowlege of ane Affyse of the perfones fummond to that effect.

ASSISA.

James Somerwell of Spittell,	Johne Levingstoun of Hayneing,	James Hoppringile of Heriote
James Levingstoun of Jerifwoid,	Robert Johnnstoun of Wamfray,	mylne,
Patrik Hunter of Hiltarvet,	Ja ^s Douglas, portioner of Lugtoun,	Robert Phillope, Schereff-clerk
Johne Achiefoun, portioner of	Eduard Johnnestoun, elder, bur-	of Dumfreis,
Inuerefk,	ges of Edinburgh,	Mr James Ord,
George Redik, Shereff-depute of	Johne Ker, portioner of Duding-	George Carnebie, burges of Edr,
Kirkcudbrycht,	stounne,	Hew Rois of Balnamukie.

Eftir sweiring of the Affyse, the faid Mr Thomas of new agane, in thair

¹ Countrymen.

² Than.

³ Sitting as Assessors. Their names are not recorded.

prefence and audience, confesses the wryting and affixing of the THESES and APPENDICES following thairupone; and that the THESES producet ar the famyn that was writtin and affixt be him: And as ofbefoir, he offeris him felff in his Maieftis will for that offence.

My lord Aduocat takis instrumentis of the fweiring of the Affyse: and for verificatioun of the Dittay, produces the fairfaidis THESIS or PROPOSITION, with the ten fals and vntrew ARGUMENTIS or REASONES following thairupone, all writtin with the said Mr Thomas awin hand. Repeittis the said Mr Thomas Judiciall Confessioun, first maid in prefens of the Justice, and thaireftir renewit be him in the said Affyse prefens and audience; and his becoming in his Maieftis will, as guiltie and culpable of the saidis crymes: And lykwayis produces, for the said Affyse forder informatioun, the said Mr Thomas awin Depositiones maid and fubfcriuit be him at Edinburgh, the xj August instant, in prefens of his lordschip, as his examinatur, nominat and appointit be the Lordis of his Maieftis Secreit Counsell. And in respect thairof, and that the said Mr Thomas, eftir reiding of his Depositiones to him judiciallie, in prefens of the Justice and Affyse, abydis thairat, and that thairby the saidis crymes ar clerlie verifeit and provin with fa manifest probabilities; in caice ony of thame acquit the pannell, (as he thinkis nane of thame will be fa voyde of knowlege or conscience fa to do,) Protestis for wilful and manifest Errour, with all perrel of the Law that may follow thairupone.

VERDICT. The Affyse,¹ being ryplie and at lenth advyfet thairwith, togidder with the villannous and infamous Pasqueill or Thefes, and damnable Appendices fubioynet thairto; his Judiciall Confessioun and acknowledgeing thairof, and becoming in his Maieftis will for the famyn, as altogidder guiltie and culpable thairof; his fubfcriuit Depositiones, producet be our fouerane lordis Aduocat, for cleiring and instructing of the said Dittay; togidder with the feuerall Actis of Parliament quhairvpone the said Dittay is foundit; thay all in ane voce, be the repourt and declaratioun of the said Johnne Levinftoun, chancellor, fstand, pronuncet, and declarit the said Mr Thomas to be Giltie, culpable, and convict of the said devillifche fforgeing and expofeing, be writt, of the said villannous and ffalfe Thefes, and ffalfe and damnable Appendices fubioynet thairto; and affixing the famyn (thay being manifest lewis and vntreuthes) vpone the said Kirk dur, in forme and maner fpecifeit in his Dittay; and of the famyn Dittay, and hail crymes contenit thairintill, and of contravening, thairthrow, the tennour of the saidis Actis of Parliament; quhairby he hes incurrit and fallin vnder the danger,

¹ Mr Alexander Hammiltoun of Kinglas; Raulf Ker, bailzie of Lauder; Robert Montray of Seyfeild, ... Allardice of Skadowie; Charles Cairnecrofe of Birkfneip; Johnne Paterfone, Schereff-clerk of Fyfe; Johnne Haitlie in Sneip; David Ramfay in Pethheid of Lefuaid, ... Portions of Glenkirk, and Robert Creichtoun, brother to Innernytie; ilk ane of thame vulawit in the pane of ane hundreth merkis, for thair nocht compeirance vpone the said Mr Thomas Affyse.

and within the compas of the panes and pwneischment mentionet thairintill, justlie merited be him.

THE JUSTICE, in regaird of his convictioun, Ordanit him to be tane bak to waird, and to be keipit in irnes, quhill his Maiestie by acquentit with his convictioun, and quhat exemplarie pwneischment fall be execute vpon him for his offence.

Sep. 10.—SENTENCE. The Justice, conforme to ane Warrant and direction of his Maiestie, direct to my Lord of Bynning, his hienes Secreter,¹ be the mouth of Johnne Dow, dempster of Court, Ordanit the said Mr Thomas to be tane to the Mercat-croce of Edinburgh, and thair, vpon ane scaffold, first his rycht hand to be strukin aff, and thairefter his heid to be strukin frome his body: And his heid to be thaireftir affixt and set vpon ane irne prik vpon the *Nether-boll-Poirt*; and his said rycht hand to be also affixt vpon the *Wast-Poirt* of the said burgh of Edinburgh: And his hail moveable guidis and geir, &c. (gif he ony hes) to be escheit to his Maiesteis vse, as convict and culpable of the said haynous cryme.

CURIA JUSTICIARIE, &c. per M. Rob. Fairlie, *Justiciarium f. d. n. Regis, hac in parte, virtute Commissionis Dominorum Secreti Consilij, specialiter constitut.*

Mutilation.

Nov. 4.—WALTER SCOTT, sone to Johnne Scott in Newark.

¹ The following extraordinary composition has fortunately been preserved among the *Denmylne MSS.*, Advocates' Library—but the King's 'Warrant and direction' has probably been too pithy to have been filed by that obsequious courtier the 'Secreter,' even in his private Collection, as being considered too strong meat for posterity! Having the fear of his Majesty before his eyes, he perhaps felt that his own head and hand might be called on to answer for disobeying the strict injunctions given him.

MOST SACRED SOUERANE,

THE furious wretche MAISTER THOMAS ROS, wes, according to your MAIESTIES commandement, put to his tryall, and conuicted of the haynous crymes conteaned in his diuelish Pasquil, produced for verificatioun of his guiltines, to the Assyse. The Dome is delaied till your MATIE be pleased to signifye your royall determination in it.

His malitious frenesie is so mixed with presumption of his owne wourth, as he thinkis the vse of his learning and eloquence necessar to the world; and that his passioun having furneissed so much stuf, in so bad a pourpose, he is able, in ane subiect so wourthie and true as the commendation of your Royall giftes of bodie and mynd, and most princelie actions, to kythe miracles in dew publeissing thairof! To this sence, he spak in judgement: And leauing to your MAIESTIES euer gracious clemencie, multiplied examples of diuine and humane Histories, to the commendatioun of the famous Princeis who had gracioullie pardoned heigh offences; adding examples of manie, who being transported be passion to madnes, had thairefter recovered thair settled judgement, and done great and wourthie materis; promeifing no les of him self.

Your MAIESTIES Aduocat has wyfelie considered, that the infame of his Dittay meritis not to be insert in the Register of the Adiornall. Alwayis I haue sent to James Douglas the copie of the proces, that when your MATIE desyres to sie it, he may haue it reddie, and may conceale it from all vthers. So expecting the signification of your MAIESTIES farder pleafour, anent this vnnaturall and furious foole, I besek God long to preferue your MAIESTIE in perfection of all honour, happines, and contentment.

Your most sacred Maiesteis most humble, faithfull, and bund subiect and seruant,

ED^R, 22 Aug. (1613.)

BINNING.

TO THE KINGIS most sacred MAIESTIE.

Dilaitit of airt and pairt of the hurting, wounding, and mutilatioun of Adame Dalglesche, sone and appeirand air to Johnne Dalglesche of Deuchar, of thre fingeris of his left hand; committit in the moneth of August, 1617 yeiris, at Muriefones-hill, besyde the burgh of Selkirk, vpon set purpois, prouisioun, and foirthocht felonie.

PERSEWARIS, Adame Dalglesche, Sir Williame Oliphant, kny^t.

PRELOCUTOR in defence, Mr Thomas Nicolson, Aduocat.

It is allegit be the pannell and his prelocutour, that this matter can nocht be put to ane Assyse; becaus, gif ony hurt or mutilatioun was gevin be him to the persewer, nocht granting the samyn, it was done in his awin defence; insofar as, vpon the sevint of August 1617, the pannell was set vpon be Adame Dalglesche, persewar, neir to the toun of Selkirk, and was crewallie hurt be him: ffor the quhilk, the said Adame, vpon the xxvj day of Marche 1618, being summond befor the Scheref of Selkirk and his deputis, to vnderly the Law for the hurting and wounding of the said Walter Scott, defender, in the heid, to the effusioun of his bluid in grit quantitie, was, be ane Assyse of xv sworne men, fund gyltie, and convict of the bluid and bluid-wyte: And producet the Rolment of Court, for verificatioun thair of, vnder the subscriptionn of Alexander Wilkiesoun, clerk of the said Schereff-Court. *Secundo*, the Dittay is nawayis relevant to pas to the knowlege of ane Assyse, becaus *mutilatio est tantum amputatio membri*; and thair is na member cuttit af, ffor the persewaris haill hand, and fingeris thair of, ar yit extant be occulour inspectioun; and he is able to move his hand and fingeris, and to grip thairwith.

It is ansuerit be the persewaris, that the allegeances foirsaidis aucht to be repellit, in respect of the summondis and Dittay producet; with ane Testimoniall of the Chirurganes, subscryuit be the Deacone and thre of his bretherene, testiefeing the mutilatioun, togidder with the persewaris awin mutilat hand, mutilat in thre fingeris thair of schawin judicillie to the Judge. And as to the Rolment of Court producet, na respect sould be had thairto, the samyn being altogidder null and repugnant to the lawis of this realme; be the quhilk, ane Sentence is gevin out in ane Criminall matter, the pairtie accused nocht compeirand, convictand him of ane cryme; quhairas, be the Law, (he nocht being present nor compeirand,) he aucht nocht to haif bene put to ane Assyse; bot the maist that could haif bene done be the Schereff in that Judicatorie, was allanerlie, to haif vnlawit him *in pena contumacie*: And albeit the Schereff and his depute wald geve out his or thair Testimoniall, that the said Adame Dalglesche, quha is mutilat, was the persewar, na respect sould be had thairto, becaus that is na pairt of thair office: And thairfoir, na respect sould be had to the Rolment of Court.

To the quhilks, it is replyit be the pannell, that the Rolment of Court is sufficient to instruct his allegeance; becaus, quatevir the pannell did, it was in

his awin defence, in respect of the forme of proceeding vsset in the Scheref Court, quhilk is, to put the pairtie accusset to ane Assyse, albeit he be absent and compeiris nocht; alwayis,¹ it is sufficient to instruct that pairt, that he is convict of the bluid and bluid-wyte, and was *contumax*,² and compeirit nocht; quhairupoun he tuik the cryme vpone him: And as for that pairt of the allegiance maid be the pannell, that the taking away of the finger is nocht *amputatio membri*, becaus the finger is nocht *membrum*, bot *pars membri*, as sayis BALDUS, Leg. *non sunt liberi*, ff. *de statu hominum*,—whois wordis ar, *Nota, digitus non dicitur membrum sed pars officialis membri; et sic amputans digitum non dicitur amputare membrum*: And BARTOL. Confilio 201, sayis, *Queritur numque digitus sit membrum? Respondetur quod non, sed potius pars siue officium membri; per Legem, non sunt liberi*, ff. *de statu hominum*.—*Tertio*, the persewar is nocht mutilat in thais thre fingeris, becaus he is able to grip with thame and hald; and sa thay ar nocht vnprofitable.—*Last*, thair can na payne of the body be inflictit, albeit the thre fingeris was mutilat, as is allegit; becaus na pane corporall can follow, feing na death followit; bot only ane arbitrarie and pecuniall payne, to be modifeit be the Judge.

It is ansuerit be the persewaris, to that pairt of the allegiance proponit, that the cutting af of ane finger is nocht mutilatioun, it is nocht pertinent to this purpois; becaus the persewar compleinis that he is mutilat of thre fingeris, quhilk ar nocht cut aff, bot mutilat and maid vnhable, quhairby he hes nocht the full and rycht vse, nather of his thre fingeris, nor yit of that hand: And as for the mutilatioun it self, and verritie thair of, it is verifeit be oculour inspectioun, and be the Chirurges Testimoniall producet: And quhair it is allegit, that the Rolment of Court producet, is only vsset bot to verifie that the persewer is culpable of the bluid and bluid-wyte, repeitis the ansuer maid thairto of befoir, with this eik,³ that the Schereff had na power to put him to ane Assyse, he nocht compeirand; sa that the Declaratioun maid be the Inqueist, aucht nawayis to be respectit: And as to the Schereff, he had nocht power to geve ony Declaratioun thairupoun; and the pairteis contumacie and absence is na cause to convict him of the bluid or bluid-wyte; and becaus of his absence, he could be na forder convict bot in payment of the vnlaw; sua that, in respect of the premisses, na respect aucht to be had to the Rolment of Court or ony pairt thair of: And albeit a pairtie be *contumax* and compeir nocht, that contumacie convictis him nocht of the cryme; vtherwayis, gif ane pairtie war *contumax*, it war nocht neidfull to put him to ane Assyse of new, quhilk war ane grit absurditie; feing, findrie persones being summoned to compeir befoir the Justice Generall and vtheris Judges in Criminall causes, thay purge thair contumacie, and offer thame selfis to ane tryell; and cowmonlie thay ar clanget be the Assyse; as was

¹ At all events.² Contumacious; showed contempt of Court by not appearing.³ Addition.

ffund in this Judgment, betuix *Cunninghame* and *Wylie*. And as to the Doctouris of the Law allegit, na respect aucht to be had thairto in this Judicatorie, in respect of the inviolable practique obseruet within this realme; quhairin, mutilatioun of ony pairt of ane mannis persone, be the quhilk he is frustrat of the rycht vse thairof, is put to ane Assyse determinatioun; the Justice advyfes and resolues vpone the pwneischment, be advyse of the Lordis of Secreit Counsell.

THE perfewar Restrictis this Lybell to the mutilatioun of the thre last fingers of his left hand allanerlie.

It is forder allegit be the pannell, that he can nocht be put to ane Assyse for the mutilatioun lybellit; in respect, gif ony hurt or mutilatioun be gevin to the perfewar, it was done be the perfewar him self, in drawing of his awin fuord the tyme lybellit; quhilk he has dyuerse tymes confessit to Andro Scott Chirurgane, and vtheris; and desyres the perfewaris ayth to be tane thairupoun.

The perfewar, being solemnlie fuorne vpone the last allegiance, anent the mutilatioun be him self with his awin fuord; he, be his grit aith, denyit the samyn; and affirmet that he was mutilat be Walter Scott, defender, and na vther: Quhairupoun my lord Aduocat askit instrumentis.

THE JUSTICE findis the Dittay relevant; and remittis the samyn to the tryell of ane Assyse.

ASSISA.

Robert Trumble of Huttrilburne, Johnne Trumble of Howdene, James Kene, bailzie of Selkirk, James Pringill in Tynneis.¹

The perfewar, be his grit ayth, swore the Dittay to be of verritie: Quhairupoun my lord Aduocat askit instrumentis. And in respect thairof, and of the Chirurganes Testimoniall producet, with the evidence of the mutilatioun, be schawing of the perfewaris mutilat fingeris, Protestis for Wilfull Errour, gif the Assyse acquit.—The pannell repeittis the allegiances maid be him of befoir, now to the Assyse, speciallie, that pairt thairof, that the cryme was committit in his awin defence, and that he was perfewit be the perfewar, and is convict thairof, and of the bluid and bluid-wyte, as the Rolment of Court beiris.

VERDICT. The Assyse, be the mouth and declaratioun of James Wauch in Selkirk, chancellor, fand the said Walter Scott to be ffylet, culpable, and convict of the mutilatioun of the said Adam of thre fingeris of his said left hand, in manner and at the tyme specifeit in the said Dittay.

THE JUSTICE, in respect of the former convictioun, Ordanit the pannell to find caution for his compeirance befoir the Justice or his deputis, in the Tolbuth of Edinburgh, the ellevint day of November instant, to heir sic Dome and pwneischment to be inflictit vpone him for the said cryme, as fall be inioynet be

¹ The rest of the Assise were persons of no note.

the Lordis of Secreit Counfall: And that he onnawayis depairt furth of the burgh of Edinburgh, in the meane tyme; vnder the pane of ffyve thowfeand merkis money.—George Scott of Castelfyde, Robert Scott of Hertwoidmyres, Walter Scott in Loquharret, and Williame Mitchelhill, burges of Selkirk, become cautioneris and fouerteis, &c.

Nov. 11.—CONTINUED to the xiiij day of Januar nixt.

(Jan. 13, 1619.)—THE JUSTICE, of consent of Adame Dalgleische, perfewer, continewis the pronunceing of Dome, to the tent day of Februar nixtocum.

(Feb. 11.)—THE dyett DESERTIT, be direction of the Thesaurer for the Kingis pairt; in respect the pairteis ar agreit be my Lord of Balcleuches Decreit gevin thairin, to quhome the matter was submittit.

Slaughter.

Nov. 11.—GAWIN NISBET, sone to Robert Nisbet of Dalzell, and James Scott in Ardblairis.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} James Hammiltoun in Brigbrae; committit at ane Oisler-hous, callit the Woman-hill, in the moneth of . . . , 1617.

PERSEWAR, Robert Hammiltoun, as brother.

THE Justice, of consent of aither pairtie, continewis this dyet to the thrid day of the air (of Lanerk), or soner, vpon xv dayis wairning, &c.

[*Mr Alexander Coluile.*]

Cutting and Carrying away of Growing Timber.

Nov. 18.—DAVID SPALDING of Effintullie, and Alexander Robertfone of Myddill Downie.

Dilaitit of airt and pairt of the cutting down of certane grit growand treyis, and away-taking thairof, furth of Johnne Erle of Mar his Forrestis and woidis, within the boundis of Braemar, Cromar, Strathdie, and Glengarie.

In respect of thair compeirance, offerit thame selffis to the tryell of the Law, as altogidder innocent thairof; and protestit for thair cautioneris releif; and that thai sould nocht be trubillit or charget for the saidis allegit crymes.

Slaughter.

Nov. 18.—JAMES MYDDILTOUN, sone to Robert Myddiltoun, tailzeour, burges of Edinburgh.¹

The famyn day compeirit personallie, in judgement, Robert Wynrahame, Herauld, and product ane Supplicatioun, quhilk was gevin in to the Lordis of his Maiesteis Secreit Counfall, be James Myddiltoun, sone to Robert Myddiltoun,

¹ See Aug. 26, 1612, where the whole particulars of the Trial are inserted.

tailzeour burges of Edinburghe, anent the said James puting to libertie; togidder with the saidis Lordis of Secreit Counfall thair Warrant and delyuerance on the bak thairof. Off the quhilk SUPPLICATIOUN and delyuerance the tennour followis.

MY LORDIS OF SECREIT COUNSALL, vnto your lordschipis humlie meanis and schawis I, your seruitour, *James Mydiltoun*, sone lauchfull to vmq^{le} Robert Mydiltoun, tailzeour burges of Edr, That quhair, vpon occasioun of that vnhappie accident of the slauchter of vmq^{le} *Clement Mauchane*, committit be me, I was takin, presentit to iustice, and convict for pe same, and the dome of death was pronuncet aganis me accoirdinglie thairfor: And pe pairtie, from tyme to tyme, thir sex 5eiris bygane, haifing gevin eir to the offeris of Affythement,¹ quhilkis war by me and my freindis maid and offerit vnto thame; in end, by submissioun of pe matter vnto your lordschipis Sentence and Decreit, as gevin and pronuncet pairintill, quhairby I am decernit to be BANISCHET pe realmes of Scotland and Ingland, and ordanit never to returne agane within the same, without Licence and consent of Sir Johnne Cokburne of Ormestoun, kny^t, Justice clerk, and Mr James Mauchane, brother to the said vmq^{le} Clement Mauchane, first had and obtenit pairto, vnder the pane of deid, to be execute vpon me without fauour; conforme to pe Sentence and dome alreddie gevin and pronuncet aganis me in pis matter. Accoirding quhairvnto, I am maist willing to act my self in pe buikis of Adiornall: In consideratioun quhairof, I humblie beseik your lordschip to geve Warrant and command, heirby, to the Justice clerk and his deputis to tak me actit in the buikis of Adiornall, in maner and to the effect foirsaid, vnder pe pane aboue writtin: Quhairanent pir presentis fall be vnto pe Justice clerk and his deputis ane Warrant sufficient: And your lordschipis anfuier.

APUD ED^r, xvij Nouembris, 1618, THE LORDIS Ordanis the Justice, Justice clerk, and his deputis, to appoint and set a Justice Court, and to tak pis supplicant actit in pe buikis of Adiornall, that he fall depairt furth of the realmes of Scotland and England, within pe space of ane moneth eftir pe dait heirof; and returne (nocht) agane within pis realme, vnder the pane of deid: And he haifing actit him self, as said is, Ordanis pe said Justice to caus put him to libertie: And Ordanis this supplicant, that, during the tyme of his remaning within pis cuntrie, he hant² nocht Kirk nor mercat, and that he weir nocht a sword.

AL. CANCELL^r. SANCTANDROIS. LAUDERDAILL. CARNAGY. J. PRYMOIS.

AND accoirding to the said WARRANT, the said Robert Wynrahame desyret my Lord Justice to tak the said James Mydiltoun actit; lyk as, the said James Mydiltoun, immediatlie thaireftir, being, be directioun of the Justice, brocht furth of waird be George Foulis, his Maiesteis Maister Cunzeour,² and ane of the present Bailleis of Edinburghe, and presentit vpon pannell, conforme to the foirsaid Supplicatioun and Warrant on the bak thairof, maist willinglie become actit, bund, and obleift, that he fall depairt and pass of the realmes of Scotland and Ingland, within the space of ane moneth, &c.⁴ Quhairvnto my Lord Justice interponet his authoritie and Decreit: And in respect of the former Act, and for obedience of the said Warrant, Ordanis the said James Mydiltoun to be fred and

¹ A compensation or *solatium*, by way of fine, paid to the relations of the murdered party.

² Haunt; frequent. ³ Coiner; Master of the Mint. This officer (George Foulis of Ravelston) was the son-in-law and successor of GEORGE BANNATYNE, the far-famed Compiler of the greatest body of Ancient Scottish Poetry now extant; in honour of whom the Literary Association, termed THE BANNATYNE CLUB, assumed his name.

⁴ As above narrated.

releit furth of the said Tolbuth and waird of Edinburghe be the Proveist and bailleis of Edinburghe.

The said James Mydiltoun, *olim in carcere*, and now at libertie furth of waird, Ratifeis, approves, and affirmes the Band maid and subferyuit be him and his freindis, anent his Banifchment, &c., and payment of the fowmes of money thairin contenit, &c.

Slaughter.

Nov. 20.—PATRICK HEROUN of Kierochtrie.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Robert Gordoun of Bairnairny; committit within the duelling hous of Andro M^cDowell, mercheand in Monygof, in the moneth of September last.

PERSEWAR, Alexander Gordoun of Barnernie, eldest sone.

The pannell protestis for his cautioneris releif; and offeris him self to the tryell of the Law, for the said allegit cryme, quhair of he is altogidder innocent; difassenting to all maner of continuatioun.

THE Justice Continewis this dyet, of the perseweris consent and desyre, to the thrid day of the nixt Justice-air of the scherefdom quhair the pannell duellis, (Wigtoun,) or soner, vpon xv dayis wairning. And ordanis caution to be ffund be him for his entrie to that effect, vnder the panes contenit in the Actis of Parliament: Quha fund Sir Patrick M^kie of Larg caution for his entrie, &c.

Usurping King's Authority, by taking Captive and Detaining, &c.

Nov. 20.—THOMAS MELDRUM of Idene;¹ Walter Grant, his fervand; James Grant in Tilliebo; Johnne Roife, fervand to the said Thomas.

Dilaitit for taking and apprehending of Johnne Meldrum of Ordley captiue and prifsoner, furth of his duelling house of Ordley, vpon the viij day of Maij, 1612 yeiris, vnder nycht; cayreit him to the said Thomas duelling hous of Idene, quhairin he was detenit, *in privato carcere*, be the space of foure dayis and foure nychtis; and thairfra, cayreit him to Sir Alexander Gordoun of Clwneis hous, quhair he was detenit, *in privato carcere*, the space of tua dayis and tua nychtis; and thairfra brocht him, as ane captiue, all the way to the burgh of Edinburghe, to the duelling hous of Alexander Watfone, quhairin he was detenit, *in privato carcere*, as ane prifsoner, the space of xxiiij houris: Vfurpeand thairby his Maiesteis authoritie vpon thame, in taking and detening of the said Johnne, *in privato carcere*, but² Commissioun or authoritie, be the spaces foirsaid.

PERSEWARIS, Johnne Meldrum of Ordley; Sir Williame Oliphant, kny^t.

PRELOCUTOURIS in defence, Mr Thomas Hoip, Mr Thomas Nicolsone, elder.

¹ See Jan. 9, 1618.

² Without.

It is allegit be the pannell, that na proces can be grantit at Johnne Meldrumis instance, becaus he is rebell and at his Maiesteis horne; and producet fyve feuerall Hoirningis for verifeing thair of.—My lord Aduocat declairis he infistis in the perfute for the Kingis Maiesteis intreis aganis the pannell, quha had na power to tak and detene the said Johnne, in maner lybellit.

It is allegit be the pannell, that gif the Dittay war trew, (nocht grantand the samyn,) that thai did na wrang in taking and detening of the said Johnne Meldrum, becaus the tyme of his taking, he was rebell and at the horne; and repeittis the Hoirningis producet for instructing thair of: And as the pannell could nocht be callit for Slauchter of ane rebell at that tyme, far les can thai be persewit for his taking.—It is ansuerit be my lord Aduocat, as persewer, that the exception aucht to be repellit; *ffirst*, becaus he infistis vpone the hail lybell *coniunctim*, as ane cryme to infer the conclusioun thairin contenit, viz. taking and detening of Johnne Meldrum *in privato carcere*, as the lybell beiris: *Secundo*, adheirand to the first ansuer, geveand¹ the said Johnne had bene rebell, the pannell had na Warrant to tak or apprehend him, thay nor nane of thame being Magistrattis, haifand na Jurisdictioun, power, nor commissioun; seing the pannell could nevir haif bene accuset for suffering a rebell to pas vp and down the cuntrie, nather warthayastrictit of the Law² to tak him, nather mycht thay tak him.

It is duplyit be the pannell, that the exceptioun standis relevant, nochtwithstanding of the ansuer, insafar as the Kingis Maiesteis rebell can haif na benifeit of his Maiesteis Lawis; and thairfoir, as nocht being the Kingis frie leige, it was lauchfull to the pannell to tak him; and in the Law it is cleir, *quod capere Bannitum unicuique permittitur*, L. finali Cod. de Maleficis et Machematicis; Baldus in Lege prima, Cod. de Summa Trinitate: And the resson of the Law is, *quia Bannitus habetur pro fugitivo; et fugitivum quilibet potest capere*; Bald. in Lege qui bonis, Cod. qui bonis cedere: And it was nevir practizet in this Judicatorie, that Hoirning being obiectit and producet, ather for hurting, slaying, or taking of ony man, proces was grantit. And it being now opponit, that the persone tane was the Kingis Rebell, the pairtie persewit was nevir, nor can nevir be put to the knowlege of ane Assyse. Lykas, it is allegit, that *the Laird of Drumlangrig*, being accuset for taking of *Kirkmichell*, was nocht put to ane Assyse. It is forder eikit to the allegiance, that the pannell had ane speciall intreis to tak him, becaus he was rebell and at the horne for nocht removeing fra his landis of Woidheid, quhilkis landis of Woidheid he violentlie possessit, and opprest the tennentis. Lyk as, the said Thomas Meldrum of Iden, finding the said Johnne Meldrum to be nyne or ten tymes his Maiesteis rebell, and haifing letteris of Captioun to tak and apprehend him, the said Johnne being

¹ Giving or granting, for the sake of argument.

² Bound by law.

ane fugitiue and ane howlat,¹ nocht appeirand in the day; and it being cum to the pannellis knowlege, the tyme lybellit, that he was cum, vnder filence of nycht, and enterit within the houffis, the pannell, vpon suddantie, being adverteist by the spyis, nocht haifing the occasioun² of ane messinger, was forcet of necessitie, *propter periculum fuge*, to pas him self, with his awin domestik fervandis, and to seasevpon the said Johnne, of intentioun to exhibeit him to Justice, he being his Maiesteis rebell for causses Criminall, sic as for invading *the Guidman of Harthill, &c.*, as the Hoirningis beiris: Lyk as, with all convenient dilligence, the pannell brocht the said Johnne Meldrum to Edinburghe, of intentioun to exhibeit him to justice; and in the meane tyme, he being seastit vpon and put in waird, at the instance of dyuerse perfonis, baith for dett, ryottis, and oppreSSIONES. Quhairvpon the pannell meanit him self³ to the Lordis of Secreit Counsell; quha, be thair Warrant and directioun, vpon the xxj of Maij, 1612, Ordanit the said cautioun for observeing his Maiesteis peace, and his personall compeirance, quhan euir he fould be charget thairto, vnder the pane of V^m (5000) merkis, as the Ordinance, heirwith producet, beiris. Sua that the pannell, being in *prosecutione proprie injurie*, for freithing⁴ him self and his tennentis of ane manifest opprefour, *et quum latitabat tanquam fugitivus*, as said is, he was in *optima fide* to tak him; and nather the captor nor detentioun can be comptit criminall, becaus it is lauchfull, *cui libet ex populo*, to tak ane notorious malefactour, and to exhibeit him to justice; and his detentioun is nocht *culpa*, becaus he was presentit to justice.

It is answert be my lord Aduocat to the first pairt of the Duply, that he repeitis his former answert; for albeit ane rebell may nather persew nor defend in judgement, that is na reasone quhairfoir everie privat man fould tak him at his awin hand, and detene him in his privat hous, as is set down in the lybell. Quhair the defender wald compair ane rebell *cum bannito*, nocht grantand to the Law allegit, quhilk makis na mentioun *de Bannito*, ffor *Bannitus* was properlie callit he quha transgressit aganis the Empyre or the Estait. As to the allegiance proponit aganis all the perseweris rebelliones, thair is nocht ane proponit for ane criminall cause persewit criminallie; and as to the haille ciuile Hoirningis, repeittis as of befoir. And quhair it is allegit, that he was rebell at the instance of Thomas Meldrum him self, ane of the pannell, for nocht removeing fra his landis of Woidheid, it is answert, that albeit he was partie aganis him, that gave him na authoritie to tak him at his awin hand, speciallie being duelling and remaning in his awin hous, and vpon his awin heritage of Ordley, and nawayis being fugitiue fra his Maiesteis lawis at that tyme. As to the Hoirning vsset aganis him, at the instance of his Maiesteis Aduocat for the tyme, the Guidman of Harthill

¹ Owl. Such persons were likewise often termed *night-hawks*.

² Opportunity; convenience.

³ Made suit; complained.

⁴ Freeing; ridding.

and his bairnis, is na Criminall Hoirning, becaufe it proceedis frome ane perfute agitat afoir the Counsell; and ffordere, to purge that Hoirning, he was relaxt thairfra, lang of befoir, viz. in *anno* 1609. As to the Letteris of Captioun producet, na respect fould be had thairto, becaus thair is an executioun producet, quhairupoun I tak instrumentis, defyreing the haill blankis thairintill to be fcoirit; and allegis, that na respect fould be had thairto, becaus the Letteris of Captioun ar nocht direct to him, nor to nane of the perfones that concurret with him in the taking of the faid Johnne Meldrum: Lyk as, na respect aucht to be had to the faidis Letteris of Captioun, becaus thair is na executioun producet. As to the Warrant of the Secreit Counsell, producet, the perfewar acceptis the famyn, and alledges that this Warrant, gevin vpone the xxj of Maij, 1612, could be na Warrant to the perfones on pannell, nor nane of thame, to haif tane him vpone the aucht day of Maij preceeding, and to haif keipit him *in privatis carceribus* to the faid xxj day, *quum carcer est meri imperij, et non competit privato*; and ane Ordiner Judge hes nocht power to keip ane perfone tane *in privato domo* attour¹ the fpace of xxiiij houris. Sua, infistand vpone the haill lybell coniunctlie; as is confauet, the haill argumentis proponit for the pannell aucht to be repellit.

It is forder exceptit be the pannell, that with the Hoirningis producet, and allegeances foundit vpone the rebellious of the perfewar, the defender did na wrang to tak or detene the perfewar, for the reffones foirfaidis. And quhair it is allegit, that he mycht nocht detene him, *quia carcer est meri imperii*; *ffirst*, it is allegit, that quhan ane rebell is tane *ad hunc finem*, to present him to the Judge Ordiner, thair is na wrang done, quhilk is in this caice; as is decydit in the Law laillie allegit, *quod ait Pretor, Si debitorum ff. Digest. que in fraudem creditorum*: And thairfoir, feing the defender tuik the perfewar, being ane rebell, and detenit him quhill² he brocht him to the fait of Justice, and thair presentit him, thair can be na vsurpation of the Kingis authoritie: And as for the fpace of detentioun, it may be langer or fchorter, accoirding to the distance of the place; as is cleir in Julius Clarus, L. quinta § finali, *si captus, et aliquis potest illum detinere, et captum Judici presentare, etiam post septem dies*. And the same Clarus fchawis, quhair it was practizet contra Dominum Joannem Stephanum, *qui furem septem dies detinuit, &c. sed cum compertum fuerit, quod Judici et officialis obtulerit, absolutus fuerit*.—*Secundo*, it is nocht capitall, bot the grittest pane that is inflictit is, *tot dies manere in carcere publico, quot illum in privato incluserit*: ffor albeit Lex vnica, Cod. *de privato carcere*, appointis it *penam maiestatis*, yit it is mendit be the nixt Conflitutioun immediatlie thair-effir following, quhilk appointis the pane foirfaid. Ita Cujacius, &c.: And, gif neid beis, fall be provin be the confuetude of all Nations; and gif *privati*

¹ More than; above.² Until.

carceres (quhairin thay ar done be manifest vsurpation) ar nocht capitall, *multo minus* can the pannell fall under ony corporall pwneischment, haifing tane ane manifest oppreffour, and presenting him to Justice. *Last*, as to the Relaxation fra *Harthillis* Hoirning, it is null, becaus the Kingis Aduocat and the pairtie is thairintill ordanit to be summond, quhilk is nocht done.

My lord Aduocat, anfueraund to the first pairt of the secund allegiance, sayis, that the persewer is formallie contrair to the pannell, and that the lybell contenis ane sufficient Criminall caus, to put the pannell to the knowlege of ane Assyse; And quhair it is allegit, that the pannell brocht the persewer and presentit him to ane Judge, desyres the pannell to condiscend vpon the name of the Judge to quhome he was presentit; ffor it is treuthe, that quhan he was brocht to Ed^r, he brocht him to the calsay,¹ and than tuik instrumentis of his setting to libertie; and thairefter, certane of his creditouris, be vertew of Captioun, tuik him and pat him in waird. And quhan it is allegit that the taking of persones and keiping of thame in *privatis carceribus* is nocht capitall, the direct contrair is of verritie; becaus the said cryme is nocht only capitall, bot, be the rigour of the Law, is tressonable; as was decydit befor the Justice General aganis *the Erles of Huntlie and Craford*, ffor taking of *the Majster of Glames*. As to the practique of *the Laird of Drumlanrig*, in that caice it was alleget, for defence of *Drumlanrig*, that *Kirkmichell* was tane be vertew of Letteris of Captioun, direct to *the Schereff of Nidisdail*, and na Interlocutour was pronuncet in that cause, becaus the persewar past fra the persute thair of, *pro loco et tempore*. In respect quhairof, the lybell standis relevant; and, nochtwithstanding of the saidis allegiances maid be the pannell in the contrair, sould be put to the knowlege of ane Assyse.

THE JUSTICE continewis his Interlocutour to the thrid day of the nixt Justice air of the scherefdome of Aberdene, or soner, vpon xv dayis wairning.—Patrik Meldrum ffear of Iden become fouertie for the entrie of the saidis Thomas Meldrum of Iden, his father.

Slaughter—Horse-stealing.

Nov. 20.—JOHNE MELDRUM of Ordley.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Cristian Watfone, spous to Alexander Bythe sumtyme in Scottistoun, in manner specifeit in the Letteris; committit in Marche 1614: And for airt and pairt of the Steilling of tua horsis fra Thomas Meldrum of Idene; committit in September, 1608.

PERSEWARIS, Alexander Bythe, as spous; Thomas Meldrum of Idene; Sir Williame Oliphant, kny^t.

PRELOCUTOUR in defence, Mr Vmphra Blindschellis, (Advocate.)

¹ Causeway; the paved public streets within the gates.

THE JUSTICE continewis this dyet, for tryell of baithe the crymes aboue written, to the thrid day of the nixt Justice-air of the Sherefdom of Abirdene, &c.—Mr Williame Levingstoune become fouertie, &c.

Slaughter—Demembration.

Dec. 4.—WILLIAME STEWART, at the mylne of Dalcrove.

Dilaitit of airt and pairt of the Slauchter of vinq^{le} Dauid Toscheoche, younger of Monyvaird, and of airt and pairt of the Demembring of Dauid Malloche, his ferwand, of his rycht hand; and remanent crymes contenit in the Letteris; committit the 24 of Junij last, within the burgh of Perth.¹

Compeirit Hew Campbell *excusatorio nomine* for *Annas Grahame Lady Monyvaird*, and producet the Letteris deulie execute and indorfate, togidder with ane Testimoniall, subscryuit be the said Annas, and be Mr Johne Menteith Minister at Monzie, and Mr Dauid Drummond Minister at Creiff, testifeing the said Annas Grahame to be newlie delyuerit of hir birth; and thairthrow, vnhable to travell to the keiping of this dyet and persute of the said Williame Stewart for the said cryme: And in respect thair of, protestit for releif of the Lairdis of Laweris and Inchebrakie, cautioneris for repoirting and persute of the saidis Letteris.

THE JUSTICE continewis the dyet to the thrid day of the nixt Justice-air of the Scherefdom of Perth, or soner, vpone xv dayis wairning; and ordanis the pannell to find cautoun for his re-entrie. *Plegio, Waltero Stewart de Heildoun.*

PERSEWAR, Dauid Malloche, sumtyme fervand to vinq^{le} Dauid Toscheoche.

(Feb. 25, 1620.)—THE persewer declaris, that at the tyme of the raising of the Letteris aganis the pannell, informatioun was gevin to him that the said W^m Stewart was in companie with Laurence Bruce of Culmalundie, Alexander Flemyng of Moness, Alexander Bruce, and remanent persones thair complices, at the away-streking of his hand; bot sensyne, he hes tryit² that he is altogidder innocent thair of, nather was he vpone the grund at the committing of that fact: In respect quhair of, he passis *simpliciter* fra the said Williame his persute.

Continued to the air of Perth, tertio Itineris, or soner, vpone xv dayis wairning. Thomas Layng, indueller in Leyth, cautioner.

Slaughter.

Dec. 9.—ROBERT CAMPBELL, sone to Colene Campbell, burges of Glesgow.

PERSEWARIS, Thomas Symfoun at the Waft-poit of Edinburghe, as brother to the defunct; Sir Williame Oliphant of Newtoun, kny^t.

¹ See this Collection, Jul. 29, 1618, and Nov. 17, 1619.

² Proved; ascertained.

The pannell takis instrumentis of his entrie, and offeris him selff to the tryell of the Law for the said allegit cryme; affirmeing him selff to be altogidder innocent thair of; and disassentis to all forder continuatioun, in respect that, to the keeping of that dyet, and cleiring of his innocencie of the allegit Slauchter aboue writtin, being out of the cuntrie this threttene moneth bygane, he being maid foirfene¹ thair of, be Letteris direct to him, and ressaute be him in *Spane*, he hes cum furth of *Spayne*, and left his affairs thair vnperfyttit, haifing na vther errand to returne hame bot to cleir him selff of sic ane haynous imputatioun; quhair of he is innocent.

INTERLOCUTOR. The Justice continewis this matter, and all tryell to be tane thairintill, to the thrid day of the air (Renfrew), or foner, vpon xv dayis wairning; and Ordanis the pannell to find caution for his re-entrie to that effect, vnder the panes content in the Actis of Parliament: Dischargeing in the meane tyme all letteris to be direct aganis him or his cautioner, except he be resident within the cuntrie for the tyme, nocht vpon the poynt of his voyadge; rather that ony Letteris be direct in the tyme of wynter: And declaris, that in caice he be charged vpon the poynt of his voyadge, for his compeirance vpon a fyftene dayis thaireftir, in caice at the day of compeirance it be allegit be his cautioner that he could nocht guidlie enter him, becaus he was boun² to his voyadge furth of the cuntrie the tyme of the geving of the charge, respect and consideratioun fall be had to the said allegiance, the samyn being lauchfullie verifeit and provin to be of veritie: And last, the Justice Discharges the haill perones summoned vpon this Assyse fra all compeirance herein in tyme cuming, in respect this is the secund dyet keipit be thame, and nathing is done thairintill, &c.

[CURIA Jusficiarie f. d. n. Regis, tenta in pretorio de Edinburghe, per M. Patricium Sandis, Jusficiarium f. d. n. Regis, hac in parte, virtute Commissionis Dominorum Secreti Consilij.]

Slaughter.

Jan. 15, 1619.—ANDRO WAST, mafone burges of Dundie.

Dilaitit of airt and pairt of the Slauchter of vni^{le} Alexander Tailzeour, his prenteis, be throwing ane four-futtit stule at his breift and heart, and geving him ane deidlie fraik thairwith; committit within his awin duelling hous, in Dundie, in the moneth of Januar, 1611; quhair of he deceift, in Februar thaireftir, being cayreit fra Dundie to his fatheris hous in Elgyn, in ane horse-litter, in grit dollour and payne, quhair he deceiffit of the said deidlie hurt.

PERSEWARIS, Johnne Tailzeour, mafone burges of Elgyn, as father; Sir W. Oliphant of Newtoun, kny^t

PRELOCUTOR in defence, Mr Alexander Peiblis.

It is allegit be the pannell, that the Dittay, as it is qualifeit, is nawayis relevant to pas to ane Assyse; becaus it is cleir, be the Dittay, that eftir the allegit fraik gevin to the defunct with the stule lybellit, he travellit the space of foursoir myles frome Dundie to Elgyn; quha, eftir his coming to Elgyn, be the exces of travell, he contractit ane fever, quhair of he deceift.—It is ansuerit be my lord Aduocat, that the allegiance aucht to be repellit, in respect of the Dittay beiring the defunct to haif ressaute ane deidlie fraik, quhilk was the cause of his daith.

¹ Acquainted.

² Prepared; furnished; equipped.

THE JUSTICE findis the Dittay relevant ; and Ordanis the samyn to be tryit be ane Affyse.

The Aduocat takis instrumentis of the sueiring of the Affyse ; and thaireftir declairit, that feing they ar all induelleris in Dundie, to quhome the treuth of this matter was best knawin ; and that the defunct ressaunt ane deidlie straik, quhairof he deceift, protestis for Wilfull Errour, gif thay acquit.—The pannell protestit in the contrair, affirmeing that the Defunct past haill and feir¹ furth of Dundie to Elgyn, and travellit lxxx myles thaireftir, vpone fute.

VERDICT. The Affyse, be the repourt and declaratioun of Robert Moreife, merchand in Dundie, chancellor, stand, pronuncet, and declairit, all in ane voce, the said Andro Wast to be Clene, innocent, and acquit of the said crewall Slauchter.

Slaughter—Proof in exculpation, by Witnesses, refused.

Jan. 15.—JAMES SCRYMGEOUR in Balquhadlie.

Dilaitit of airt and pairt of the Slauchter of vinq^{le} Johnne Eduard in Acharne, be streking him ane deidlie straik in the heid, in September 1617 ; quhairof he deceiftit in Januar thaireftir.

PERSEWARIS, Johnne Eduard, as sone ; David Eduard, as brother ; Sir W. Oliphant, kny^t.

PRELOQUITOURIS for the pannell, Mr Thomas Hoip, Mr William Oliphant, younger.

It is allegit be the pannell and his prelocutouris, that the Dittay is nawayis relevant to pas to ane Affyse, nather in the distinct memberis nor *conjunctim* ; nather can ony Homicide be tryit or pwneift, except the samyn proceid vpone ffoirthocht ffellony. As to that member of the Dittay, beiring the defunct to haif bene best and dung with ane rung,² *non relevat* to infer ane cryme. *Secundo*, as to that article thair of, quhair the pannell haket his heid with ane quhinger,³ (nocht granting the samyn,) it is na capitall cryme, bot ane ryote ; the tryell quhairof pertenis to the Counsell. *Tertio*, quhair it is allegit, that he was strukin to the grund, and hurt in his nobill pairtis, *non relevat*, vnles the persewar confiscend quhat intrallis or noble pairtis was brokin. *Quarto*, as to that point of the lybell, quhilk is the chiefest member, beiring, that be occasioun of the haill straikis preceeding, he dwynet and pynet away to the tyme of his daith, *nullo modo relevat*, vnles he say *positive*, that he deceift be thais straikis ; *nam non dici potest prebere occasionem mortis, nisi sit causa mortis*.—It is ansuerit be my lord Aduocat, that the allegiance foirfaid aucht to be repellit, in respect of the lybell beirand, that the defunct deceift of the straikis lybellit.

It is forder allegit be the pannell, that the Dittay, as it is mendit, is nawayis relevant ; becaus the preceeding qualification can nocht be estemit *causam mortis*, except it war lybellit, that the defunct, immediatlly estir the allegit straikis, he

¹ Whole and sound, or hearty.

² Basted and violently struck with a cudgel or heavy staff.

³ Hacked or *notched* his head with a sort of hanger or short sword.

fell down in found¹ to the grund; or ellis, that be the straikis he contractit a deidlie diseafe and lay bedfast, ather immediatlie eftir the straikis to be the caus of a supervenient diseis; ffor be the cowinoun consent of all Laweris, *vulnus non dicitur causa mortis, quando a die vulneris vsque ad vigesimum primum diem nulla supervenit febris vulnerato*. Panormitanus, ad Cap. *presbiterium, extra de Homicidium*. In the quhilk place, Panormitan and all the Canonistis consentis, *quod hoc sit iudicium medicorum*; ffor if ony ffever had followit, gif he had convalescit thaireftir, the ffever falling out vpon the straik was na cause of deathe; *multo magis* in this caice, na fever following vpon the allegit straik gevin. In respect quhairof, the Dittay is nawayis relevant, *hoc autentico maxime*, that in the Dittay it is confest, that the persone flane was threscoir ten yeiris of age, sa that it was nocht possible to him to ressaue deidlie woundis, and to leave in health sa ang but² seiknes.

It is aufuerit be the persewaris, that the allegiance aucht to be repellit, in respect of the Dittay beiring deidlie woundis, in maner qualifeit in the Dittay; and that he dwynet and continewit in grit pane to the tyme of his deceis.

It is duplyit be the pannell, that my lord Aduocattis reply is only in respect of the last member; and thairfoir the vther tua, as nocht relevant, sould be scoiret out of the Summondis.

My lord Aduocat declairis, he insistis vpon the Dittay *conjunctim*, as it is confauct.—The pannell allegit in the contrair, that it can nocht be conjoynet.—It is allegit *peremptorie* be the pannell, that it can nocht be affirmet that *Johanne Eduard* deit of the allegit straikis, in respect of the lybell, quhilk beiris, that he levit be the space of foure monethis (albeit, *in rei veritate*, he levit quhill a thre dayis befor Fastrenisevin,³ quhilk was the 18 of Februar): becaus *secundum sententiam omnium medicorum, nullus lethaliter vulneratus potest vivere ultra quadraginta dies*. Jul. Clarus ad § Homicidium, vbi subdit, *quod ita observat communis silus, et si vulneratus post illatum vulnus ambulaverit, non presumitur decessisse ex vulnere*. Lege vnica, Cod. de *Emendatione servorum*. Bartol. ad Legem finalem, ff. *ficarijs*, particulo preterea extra de *Clerico percussore*. Pharmacius de *Homicidio*, Tit. 14, quest. 125, num. 46, vbi testatur de communi medicorum opinione, *Vulneratum qui ultra quadraginta dies vitam porrigit, non presumitur ex vulnere decessisse*. And be all thair consentis, gif the pairtie nocht onlie leave,⁴ bot also gif he leave in healthe, without seiknes, and walk vp and down in healthe, as ane haill man, the space of thre dayis, it is accoidit, that the wound can nocht be the cause of daithe: And the grund⁵ of this is tane out of the law of Moyfes, Exod. cap. 21, ver. 21. Off the quhilkis it is subfumet, nocht onlie that the defunct levit fourtie dayis, bot neir-hand foure tymes fourtie

¹ In a swoon or fainting fit.

² To live, in health, so long without sickness.

³ Fasten's-eve;

the day before the commencement of Lent.

⁴ Live; survive.

⁵ Ground; warrant.

dayis, ffor he deit vpon the 16 or 17 of ffebruar 1618: During the quhilk tyme, he was nocht onlie frie of feiknes, nor nevir lay bedfast, except in the ordiner tyme of rest, in the nycht; bot also, he walkit vp and down the cuntrie and parrochines about, as ane haill man, and nevir tuik bed quhill aucht dayis befor his deceis, at quhilk tyme he was tane with ane fever, quhair of baith he and his wyfe deceifit.—Nather can the accuser, quhilk is the defunctis sone, be hard to allege in the contrair; becaus, at Martines thaireftir, he forcet his father out of his awin hous; and the particuleris of this exceptioun the pannell offeris to prove be Witneses, quha are fummond be the Lordis delyuerance: Quhilkis Letteris, proceeding vpon the said delyuerance, thay produce, and desyres that the Witneses may be callit and admittit thairupone. *Last*, the lybell can nocht be sustenit *ad hunc effectum*, to pwneis the pannell to death, becaus *nullum Homicidium morte punitur, nisi homicidium dolosum et deliberatum sive ex feloniam; aut culposum vel casuale non puniuntur ad mortem*. And for proveing of this propositioun, the pannell cites the third Parliament of King James the first, cap. 51, Quhair the Estaitis distinguisches betuix Slauchter of suddentie, and Slauchter of ffoirthocht ffellonie; and declairis ffellonie to be pwneist be death; bot the vther, that the pairtie skaithed fall follow, and the pairtie trespassand defend, accoirding to the cours of the auld Lawis of this cuntrie: And sielyk, in the 6 Parliament of King James the first, cap. 95, quhilk contenis the same distinctioun, and closes this article, that gif it be ffoirthocht ffellonie, he fall die thairfoir. Vpon the quhilkis it is subsumet, that it was nevir lybellit, nor can be lybellit, that this Slauchter was committit vpon ffoirthocht ffellonie; bot be the contrair it is trew, that quhateuir the pannell did, he did it as maister to Findlay Ramsay and vni^q^{le} Johnne Eduard, being baith his tennentis, *et sic dans operam rei licite*; in sa far as Johnne Eduard, being decernit in Court, in Junij 1617, of his awin consent to haif done wrang in teilling and sawing¹ of ane peice of land pertening to the said Finlay Ramsay; and be the Act of Court, the officer was ordanit to pas the tyme of scharing, and scheir and leid the coirnes, as sawin vpon Finlay Ramsays grund; lyk as, the saidis coirnis war arreistit be the officer, vpon the sext of Junij 1617; and thaireftir, in the tyme of scheiring, the said officer haifing past to the grundis, and schorne the coirnes, and being leiding the samyn away, the said Johnne Edward cam maist prouddie and contemptuousslie (his maister being vpon the grund), and defoircet the officer in his presens; quhairupone the officer brak his wand:² Lyk as, the defunct being commandit be his maister to desist, he maist prouddie repynnet contrair his Maisteis lawis; and the pannell being present, haifing ane littill stalff in his hand, strak the defunct thairwith vpon the heid, and did no forder; nochtwithstanding quhair of,

¹ Tilling or ploughing, and sowing. ² Broke his staff or wand of office, symbolical of his being *deforced*, as it was termed, *i. e.* violently and forcibly interrupted in the execution of his office.

the defunct prouddie cayreit away the coirnes to his awin 3aird, walking foundlie vpone his feit, without any appeirance of hurt. And for verifeing thair of, producet the deforcementis.

It is anfuerit be the perfewaris, to the firft allegiance, proponit *peremptorié*, the famyn aucht to be repellit, in respect of the Dittay, Lawis and practique vniuerfallie obseruit in this Judgment, and all vther Criminall Courtis within this realme, quhairin Dittayis ar evir fund relevant, and remitted to the knowlege of ane Inqueist, being lybellit and fet down in maner as this Dittay is lybellit; and that the perfone offendit deceiffit throw the hurtis and woundis gevin to him: And quhair it is meanit,¹ that he furvivet efter the geting of the hurtis the space of fyve monethis, that pairt is nawayis relevant mair nor was the firft; in respect that the Dittay beiris, that the defunct was hurt and woundit vpone the nynt of September 1617, and he deceffit thair of vpone the aucht or nynt of Januar thaireftir, 1618; quhilk Dittay beiris lykwayis, that he dwynet continually fra the tyme of his hurting to the hour of his daith.—Quhair it is allegit, that WITNESSES aucht to be reffaut vpone this allegiance, anfueris, na Witnesfes can be reffaut in Criminall cauffis, conforme to the Lawis of this realme, except in matteris of Treffone: And albeit Witnesfes mycht be reffaut, yit thay can nocht be reffaut vnto the tyme the allegiance be firft fund relevant; and gif it war fund relevant, thair aucht na Witnesfes be reffaut befor the Affyse, feing the haill poyntis confistis *in facto*, and the tryell thair of is remittit to the Affyse, quha becumis bayth tryeris and Witnesfes thairin:² And as to the Lordis deliuerance grantit for funmondung the Witnesfes, it aucht nocht to be respectit, becaus it is privat, and grantit be the Lordis *parte non citata*. As to the last allegiance, beiring, that na man fould be pwneist to the daith, except it be done vpone ffoirthocht fellonie, the perfewer denyis that propofitioun altogidder, in respect of the vniuerfall practique of this realme; be the quhilk, all perfones criminallie perfewit for Slauchter ar put to the knowlege of ane Inqueist, and pwneist to the daith; this lybell contenand ane verrie relevant caufe, qualifeit with all the circumftances neceffar aganis the pannell, as committer of the Slauchter, with all circumftances of the Law requifte.

It is duplyit, that Witnesfes may be examinat befor the Affyse, vpone the treuth of the exceptione peremptour; and being remittit be the Judge, with the lybell, to the Inqueist, thay may cognosce thairupoun, and vpone the Witnesfes Depositiones, fa far as the famyn may geue thame licht concerning the fact: And be speciall Act of Parliament, maid in his Maiefteis xj Parliament,

¹ Represented. Literally, complained. ² For an elucidation of the ancient practice upon this point, reference is made to Mr Hume's valuable Commentaries on the Criminal Law of Scotland. The present case affords ample illustration of the doctrines held relative to the Law of Evidence, in matters Criminal, at the commencement of the Seventeenth Century.

cap. 90, it is statute, that all writtis, Witnesfes, and other probatioun, fall be led and deduced befor the Affyse, and that for tryell of the treuthe, *quia probationes in criminalibus debent esse luce meridiana clariores*; Lyk as, Witnesfes war admittit in the Criminall cause persewit be *Strauchane* aganis *Geillis Johnne-stoune*. And quhair it is affirmet, that the Warrant is purchest for summond-ing of Witnesfes, *parte non citata*, it is nocht ane Warrant against justice, bot for fortherance of justice, and cleiring the treuthe. And as to the last, the samyn is foundit vpone tua Actis of Parliament, quhilk can nocht be derogat be ane contrair custome; lykas, my lord Aduocat is nocht hable to schaw quhair this exceptioun, being proponit, was repellit.

INTERLOCUTOR of *Relevancy*.

THE JUSTICE REPELLIS the haill allegiance, in respect of the Dittay, and answers maid be my lord Aduocat in fortificatioun thair of. And Ordanis the Dittay, quhilk is fund relevant, to pas to the knowlege of ane Affyse.

Quhairupoun my lord Aduocat askit instrumentis.

THE JUSTICE, in respect thair is nocht ane number of substantial persons, landit men, accoirding to the qualitie and rank of the defender, present, to pas vpone his Affyse, Continewis all forder tryell of this matter to the thrid day of the nixt Justice-air of the scherefdom quhair the defender duellis, or soner, vpone fyftene dayis wairning: And ordanis the pannel to find caution for his re-entrie to that effect, vnder the panes contenit in the Actis of Parliament; with this restrictioun, that na Letteris be direct furth in this matter befor the first day of Junij nixt.

Quhairvpone the said James Scrymgeour, defender, askit instrumentis; and quha, for obedience of the said Justice ordinance, fand Johnne Scrymgeour of Ballanscho cautioner, to the effect, and vnder the panes foirsaid.

[*Mr Patrik Sandis, Justice-Depute.*]

Slaughter committed at a Bridal.

Jan. 29.—JOHNNE SWYNE, fervand to the Laird of Randiesfurd.

Dilaitit of airt and pairt of the crewall Slaughter of vinq^{le} Johnne M'cairtour, fervand for the tyme to Jonet Mayne, wedow, in Menstrie, be streking him with ane durk in the bellie, quhair of he deceissit; committit at ane brydell,¹ in the evening eftir supper, within the sayd Jonet Maynes duelling-hous, vpone the xxij day of December last, being Tyfday befor Jule.²

PERSEWAR, Gilchryft M'cairtour in Buttergask, as father.

The pannel confessis the cryme, and cravis Godis mercie and pardoun for the samyn.

VERDICT. The Affyse, all in ane voce, fand, pronuncet, and declairit the said

¹ Bridal (*bride-ale*), wedding.

² Yule, or Christmas.

Johnne Swyne, conforme to his awin Judiciall Confessioun, to be ffylet, culpable, and convict of the said Slauchter.—SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair his heid to be strukin frome his body; and all his moveabill guidis to be escheit, &c.

Child-Murder.

Jan. 29.—BESSIE WEIR, fervand to James Lowriestone in Over Gogar.

Dilaitit of the crewall and vnnaturall Murthour of hir awin infant bairne, borne and brocht furth be hir, in fornicatioun, to James Threipland in Biggar; committit vpon the xx day of Januar instant, about midnicht, within ane 3aird lyand to the said James Lowriestones hous in Over Gogar, immediatlie eftir hir delyuerie thairof.

VERDICT. The Assyse, all in ane voce, be the mouth and declaration of Robert Wilkie in Rathobyres, chancellor, in respect of the said Bessie hir Judiciall Confessioun of the said cryme, stand, pronuncet, and declairit her to be culpable and convict thairof.—SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair hir heid to be strukin frome hir body; and all hir guidis, gif scho ony hes, to be escheit, &c.

[*Mr Alexander Coluill, Justice-Depute.*]

Slaughter.

Feb. 3.—HABBIE RAE in Moufwall, Pait M'keg, servitour to the Laird of Lag, and twenty others.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Johnne Carutheris, callit of Dormont; committit vpon the secund of Januar last, with schottis of hagbutis and pistolettis, within the dwelling-hous of Johnne Mundallis in Torthorrell.

PERSEWARIS.

Margaret Johnnestoun, as mother; Frances Carutheris, as brother; Sir Williame Oliphant of Newtoun, kny^t,

PRELOCUTORIS in defence, Mr Thomas Hoip, Mr James Hammiltoun.

Continued to the Justice-air of Dumfries, 'tertio Itineris, vel super premonitione xv dierum.'

Slaughter.

Feb. 3.—JAMES DOUGLAS of Moufwall; Johnne and Williame Greir-fones, his fervandis; Johnne Carleill, sone to Thomas C. in Bankis; Johnne Blak in Moufwall; and Habbie Dikfone, thair.

Dilaitit for the above Slaughter. These persons were all 'denuncet rebellis, and put to the horne, for nocht finding of caution for thair personall compeirance.'

(Jul. 21.)—CONTINUED to the air of Dumfries, *tertio Itineris*, &c. Johnne Lord Fleming, cautioner.

[*Mr Alexander Coluile of Blair, Justice-Depute.*]

Slaughter.

Mar. 10.—MR THOMAS DOUGLAS, Minister at Balmirrienoche.

Dilaitit of airt and pairt of the Slauchter of vniq^{le} Thomas Creichtoun of Bodumcraig; committit betuix Balmirrienoche and Couper in Fyfe, vpon the xiiij day of Februar laft, 1619.

THE Justice, in respect of the feiknes of Jeane Carmelie, the defunctis relict, quha can nocht be present to concur in this perfute, continewis this matter to the thrid day of the nixt Justice-air of the Scheref dome of Fyfe, or foner, vpon fyftene dayis wairning: And ordanis the pannell to find caution for his re-entrie; quha fand James Douglas of Moirtoun, portioner of Gogar, &c.

Treasonable Murder under trust, credit, and assurance.

Apr. 2.—JOHNNE MAXWELL of Garrarie, and George Maxwell, his fone.

Dilaitit of the crewall and odious Murthour under trust, credeit, and assurance, of vniq^{le} Johnne M^cKie of Glashek; committit vpon the viij day of Julij 1618; in forme and maner specifeit in the Dittay producet againft thame, viz.

DITTAY against Johnne Maxwell of Garrarie, and George Maxwell, his fone.

FORSAMEKILL AS, in the ellevint Parliament haldin by our fouerane Lord and Estaittis of this kingdome, att the burgh of Edr, the xxix day of Julij, 1587, cap. 51, it is statute and Ordanit, that the Murthour and Slauchter of quhatfumeuir his Maieftis legis, quhair the partie flane is vnder the trust, credeit, assurance, and power of the flayer, all sic Murthour and Slauchter to be committit eftir the daft of the faid Act, the famyn being lauchfullie tryed, and the perfones dilaitit fund giltie thair of be ane Affyse, fall be Treffone; and being fund culpable, fall fforfalt lyfe, landis, and guidis; as in our faid Act of Parliament at mair lenth is contenit. AND trew it is, that the faid *Johnne Maxwell of Garrarie*, haifing, in his politique and craftie maner, vpon sic conditiones of fatisfaction and recompence beft knawin to him felf, conqueift and acquyrat fra the faid vniq^{le} *Johnne M^cKie of Glashek* his hail worldlie moyane¹ and eftait; and thairby drawin him to his daylie companie and attendance, alfwell within his hous of *the Garrarie*, as vther partits of the cuntrie quhair he maid his repair and refidence, he, furth of his avaricoufe and churlifche difpofitioun, lotheing and weireing² of the faid *Johnne M^cKie* his companie, in the moneth of Julij, in the yeir of God I^m. Vj^c. and aughtene yeiris, to red and exoner him felf of his cumpanie, devyfet and concludit in his devillifche heart, the pitifull³ and treffonable Murthour of the faid vniq^{le} *Johnne M^cKie*, as followis; and finding the faid vniq^{le} *Johnne* to be alwayis under his trust, credeit, affurance, and power; in fa far as, be the fpace of nyne monethis, or thairby, preceeding the tyme foirfaid of the faid intendit Murthour, the faid vniq^{le} *Johnne* was for the maift part reforting and making his daylie refidence with him, at bed and buird, within his *Place of Garrarie*, fua that thairby na fufpitioun of iniurie to be done be the faid *Johnne Maxwell* towardis the faid *Johnne M^cKie* could be thoct vpon be him; the faid *Johnne Maxwell*, for effectuating of his treffonable and devillifche plott, vpon the xvij day of the faid moneth of Julij, in the yeir of God foirfaid, knawing the tyme of the faid vniq^{le} *Johnne M^cKie* his dyet, in cuming to his *Hous of Garrarie*, vnder the filence and clud of nycht, accompaneit with the faid *George Maxwell*, his fone, and vtheris thair complices, bodin⁴ with fuordis and vtheris wapponis *inuafiré*, in the faid vniq^{le} *Johnne* his cuming to the faid *Place of Garrarie*, pat violent handis in his perfone, band baith his handis and

¹ Means.

² Getting fatigued or wearied.

³ Piteous.

⁴ Furnished; provided.

feitt, and thaireftir, in maist crewall and mercieles maner, playing the pairt of hangmen and burriowis,¹ with ane hair tedder,² strangillit and wirreit him to deid; and haifing, be that violent and crewall meane, bereft him of his lyfe, thay thaireftir cayreit him to ane peit mof or burne, callit *the Burne of Raniefoun*, within ane half myle to the said *Hous of Garrarie*, quhairin they flang him: And sa, the said vmq^{le} *Johnne McKie of Glassak* was maist trefsonabillie and crewallie murdreift and flane be the said *Johnne Maxwell of Garrarie*, and *George Maxwell*, his sone, he then being vnder thair trust, credeit, assurance, and power, in maner befor deducet; and thay, and aither of thame, ar airt and pairt of the said trefsonabill and barbarous Murthour, committit vnder trust and credeit; vpone set purpois, prouisioun, precogitat malice, and foirthocht fellonie, in hie and manifest contempt of our fouerane lordis authoritie and lawis, and expres aganis the tennour of the said Act of Parliament; incurring thairthrow the pane and pwneifchment aboue writtin, expreffit thairintill, viz. as Tratouris and Murthouraris of the said vmq^{le} *Johnne McKie*, vnder trust, to fforfalt thair lyvis, landis, and guidis, to the terrour and example of vtheris to attempt the lyk heireftir.

PERSEWARIS, Niniane McKie, eldest sone to the defunct; Sir Williame Oliphant of Newtoun, kny^t, Aduocat to oure fouerane lord.

PRELOCUTOURIS in defence, Mr Alex. Peiblis, Mr Laur. McGill, Adame Cunninghame, Aduocattis.

The Aduocat producet his Maiesteis Warrant, daitit at New-mercato, the 13 of Januar, 1619, commanding him to insist in the pannellis persute, for the Murthour contenit in the Dittay: Quhilk Warrant his lordschip tuik vp agane.—My lord Aduocat declairis, that he is nocht prepairit, at this tyme, to persue in this matter; and thairfoir defyret the samyn mycht be continewit to the sevint of July nixt.—The pannell, with thair prelocutouris, altogidder disassentis to the said continuatioun, and offerit thame selffis instantlie reddie to abyde the tryell of the Law for the said cryme, as altogidder innocent thairof; and thairupoun askit instrumentis.

THE JUSTICE, nochtwithstanding of the pannellis offer and declaratioun, continewis this dyet to the said sevint day of Julij nixt; and Ordanis the pannell to be tane bak to waird to the tolbutth of Edinburgh.

The pannell offeris cautione for thair compeirance the said day; and allegit, in respect thairof, thay fould nocht pas to waird.

THE JUSTICE Ordanit thame to geve in their Supplicatioun to the Counfall, be quhais Warrant and authoritie thai war committit, and to crave thair libertie and fredome furth thairof, vpone thair offer of cautione to thair lordschipis, for thair entrie, the day foirsaid; and accoirding as the Counfall fould command, in that matter, it fould be obeyit.

PRELOCUTOR in defence, My Lord Maxwell.³

(Jul. 7.)—THE JUSTICE, be directioun of the Lordis of Secreit Counfall, and conforme to thair Lordschipis expres Warrant, continewis this dyet, and all tryell to be tane thairintill, to the xv day of December nixtocum: And Ordanis the pannell to find cautione for thair compeirance and re-entrie that day, to vnderly the law for the said Murthour, ather⁴ of thame vnder the pane of thre

¹ Old Fr. *bourreau*, an executioner.
Prelocutors.

² A hair *tether* or halter.

³ In addition to the above

⁴ Each of them.

Thowfeand merkis. Quha, for obedience of the said ordinance, stand Edward Maxuall of Hillis caution.

In respect of the quhilk caution fund be thame, the Justice ordanit the Provost and Bailles of Edinburgh to put them to libertie furth of thair waird, &c.

[ASSESSORES JUSTICIARIO, *Dominus Wilhelmus Levingstoun de Kilfith, et Dominus Georgius Erskin de Innerteill, Senatores Collegij Justicie.*]

PRELOCUTORIS in persute, My Lord of Gairleis, The Laird of Larg-McKie.

PRELOCUTORIS in defence,¹ The Maister of Maxwell; The Guidman of Hillis; Edward Forrester, Commisfar of Kirkeudbright; Johnne Young, notter.

(Dec. 15.)—THE pannell takis instrumentis of thair entrie; as also, that my Lord of Gairleis compeiris to persue thame of thair lyves; and protestis for thair cautioneris releif.—The persewaris producet the Dittay, with the Letteris and Roll of Assyse; and protestis for thair cautioneris relief, and desyret proces.

The persones on pannell denyis the hail crymes contenit in the Dittay, and passis fra all disputatioun aganis the relevancie thair of; and offeris thame selfis to the tryell of ane honest and vn suspectit Assyse.

ASSISA.

Johnne Dalrumple of Schalloche,	Johnne Maitland of Clonhie,	Andro Craufurd of Barquharrie,
Andro Bruce of Bofark,	Johnne Kirkpatrick of Bracho,	David Welsche of Colliestoun,
Willame Middlemeist, Constable	Gilbert Baird of Killingsie,	Walter Cant of Waft-mylne,
of Dumbartene,	George Logane of that Ilk,	James Birnie of Browbrie,
Duncane Hunter of Ballagane,	Willame Cunninghame of Pol-	Malcolme Dalrumpill of Water-
Willame Creichtoun of the Hill,	quharne,	fyde.

It is allegit be the pannell, that *Johnne Dalrumple* can nocht pas vpon thair Assyse, becaus he is nocht ane landit man of that qualitie and rank quhilk sould be admittit to pas thairupoun; the said Johnne Maxwell of Garrarie being ane landit Gentilman, in the rank of ane Barroun, worth thre thowfeand merkis of zeirlie rent, and abone. *Secundo*, the said Johnne is vsed and producet be my Lord of Gairleis, ane of his persewaris, as ane Witnes befor the Counsell, and hes gevin his Deposition in this matter alreddie; and in respect thair of, can nocht be ane Assyfour. *Tertio*, he is man, tennent, and fervand to *Josiah Stewart*, quha hes assistit this persute fra the first begynning thair of, and behavet him self as pairtie.—It is answerit be my lord Aduocat, that the allegiance aucht to be repellit, as altogidder irrelevant, the said *Johnne Dalrumple* being ane Gentilman of guid fame, and haifing sufficient moyane of his awin, quhairupoun he levis: And his Deposition maid be him as ane Witnes can nocht stay him to be ane Assyfour: And as to that pairt, that he payis maill and deutie to *Josias Stewart*, wha is pairtie aganis thame, *non relevat*, becaus he is nocht ane persewar, nor compeiris nocht in this Judgement to persue, nather payis he ony deutie to him bot for his teyndis, quhilk teynd-deutie can nawayis stay him to pas vpon this Assyse.—It is allegit be the pannell, that, with the teynd-deutie, he is also subiect to the said *Josias* in daylie seruice.—The said *Johnne Dalrumple* being suorne, declaris he is no forder subiect to *Josias*, bot only in payment of his teynd.

THE Justice admittis *Johnne Dalrumple*, and Ordanis him to be purget of partiall counsell; quha, being of new suorne, declarit he had gevin na partiall counsell, in this matter, in fauouris of this persewar aganis the personis on pannell;—quha was thairfor admittit.

It is allegit aganis *Walter Cant of Wefimylne*, that he can nocht be admittit vpon this Assyse,

¹ In addition to the Prelocutors who are already noted, under date, April 2, and Jul. 7.

becaus he is nocht duelland within Galloway, nor the foure halfis thairabout, conforme to the Act of Parliament, in anno 1579.—It is anfuert be my lord Aduocat, that the allegiance aucht to be repellit, becaus he is duelland within Scotland; and the Act of Parliament citet is only in matteris of Perambulation, for tryell of methis and marches, and is nocht extendit to the crymes of Slauchter and Mutilatioun, &c.—It is allegit, that he can nocht be admittit, becaus of the fairfai Act of Parliament, for *ex argumento a paritate rationis*, gif the perfonis of Inqueift, in matteris of Perambulation, man (*must*) be induellaris within the boundis of the Scherefdom quhair the landis lyis, or foure halfis about, *multo magis*, in tryell of a Slauchter or Murthour committit, fould the Affyfouris be induelleris within the boundis of the Scherefdom quhair the fact was done, or four halfis about.—Anfuert, *Statuta sunt stricti juris, et non admittent extenfionem*.

The lyk exceptioun proponit aganis *Andro Bruce of Bofark*, quha duellis nocht within the Sheref-dome, or foure halfis about.—My lord Aduocat repeitis his former anfuert for *Andro Bruce*.

It is forder allegit that *Walter Kant* is man, tennent, and fervand to *my Lord of Murray*, quha affistis this perfute; and thairfoir, can nocht pas vpon this Affyfe. The said Walter being fuorne, gif he be man, tennent, or fervand to the Erle of Murray? Declairis, he is ane of his Lordschips vassallis, and haldis his landis of him in ffeue.

THE Justice, nochtwithstanding of the former allegiances maid aganis the saidis Walter and Andro, and that the said Walter is ane ffeuar, Admittit thame vpon the Affyfe.

It is allegit aganis *Duncane Hunter of Ballagane*, that he can nocht pas vpon this Affyfe, becaus he is ane removeable tennent to the *Laird of Drumlangrig*, quha affistis this perfute, and is within degreis-defending to the *Lord of Gairleis*, perfewar. The *Laird of Ballagan* being fuorne, declairit that he is *Drumlangrigis* vassall, and na removeable tennent; quhome the Justice, in that respect, admittit.

It is allegit aganis *Eduard Maxwell in Laroche*, that he can nocht pas vpon this Affyfe, becaus *non habet in bonis*, and is nocht worth the Kingis vnlaw. *Secundo*, thair is bluid and deidlie ffeid standing betuix the pannell and him vnreconceillit. *Tertio*, he is alreddie reffaut witnes, and hes deponit in this matter, being producet be *my Lord of Gairleis* to that effect.—Anfuert, becaus he hes alreddie deponit as ane Witnes, he may the mair cleirly be admittit ane Affyfour.

THE Justice, in respect thair is na penurie of Affyfouris, Ordanis him to stand by.

David Welfche of Colliestoun admittit, of consent.

THE lord Aduocat, for verificatioun of the Dittay, producet ane Testimoniall, fubfcriuit be dyuerse Gentilmen and vtheris, testifeing the forme of *Glassakis* binding, the tyme of his out-taking of the burne; and that he hes bene first strangillit, befor his casting thairin. As lykwayis, producet the pannellis Depositione, with the Depositiones of dyuerse famous Witneffes, reffaut and examinat be the Lordis of Secreit Counsell, in that matter; and thairupoun also askit instrumentis; and protestis, in respect thair of, for Wilful Errour, gif the Affyfe acquit.—The pannell protestit in the contrair, gif thay convict thame of that detestable cryme; quhair of, vpon thair kneyis, with grit and soleme aithes, thay affirmet thame selfis to be altogidder innocent.

VERDICT. The Affyfe, for the maist pairt, be the mouth and declaratioun of William Cunninghame, chancellor, ffind, pronuncet, and declairit the saidis *Johne Maxwell of Garrarie*, and *George Maxwell*, his lauchfull sone, to be GILTIE, culpable, and convict of airt and pairt of the tressonabill and barbarous

Murthour of the said vmq^{le} *Johnne M^cKie of Glassuk*, committit be thame in forme and maner spēcifeit in thair Dittay.

SENTENCE. The Justice, be the mouth of Andro M^ccairtney, dempster of Court, adiuget thame to be tane to the Mercat-Croce of Edinburgh, and thair, thair heidis to be strukin frome thair bodeis: And all thair landis, heritages, tenementis, annualrentis, takis, steidingis, rowmes, possessiones, coirnis, cattell, inficht pleneiffing, guidis, and geir, to be sforsalt and escheit to our fouverane lordis vse, as culpable and convict of the said treffonable and detestable cryme: Quhilk was pronuncet for Dome.¹

Hurting and Wounding.

Jun. 2.—NORMOND ROBIESOUN, sone to Robert Robiesoun, mercheand burges of Sterling.

Dilaitit of airt and pairt of the Hurting and Wounding of Johnne Robene, sone naturall to Johnne Robene, notter, burges of Sterling, in the casting of him down to the grund, and louping vpone his bak with the haille force of his body; and thairthrow breking of his bak-bone, and mutilating and making him impotent thairof, he being ane young boy of nyne yeiris of age, or thairby; committit in the Valay of Sterling, in the moneth of September, 1617 yeiris.

PERSEWARIS, Johnne Robene and his father; Sir Williame Oliphant, kny^t.

PRELOCUTOUR in defence, Mr Thomas Nicolfoun, elder, Aduocat.

THE Justice continewis this dyet to the thrid day of the air of the scherefdome of Sterling, or soner, to ane fyftene dayis wairning; and ordanis the pannell to find caution for his re-entrie. Robert Robiesoun, mercheand, his father, becomes cautioner.

Slaughter.

Jul. 2.—JOHNNE M^cDOWELL of Freuche.

Dilaitit of airt and pairt of the crewall Slauchter of vmq^{le} Alexander M^ckie of Balfair.

PERSEWAR.

Sir Williame Oliphant of Newtoun, kny^t.

PRELOCUTOUR in defence.

Mr Thomas Hoip.

THE Justice continewis this matter to the thrid day of the nixt Justice-air of

¹ Sir Johnne Dumbar of Mochrum, kny^t; James Kennydie of Crugiltoun; Alex. Dumbar, appeirand of Mochrum; Hew Kennydie of Areis; Adame Ahannay, burges of Wigtoun; Robert Maxwell of Barvannok; Vthreid Campbell of Areis; Johnne Carutheris of Wadfute; Harie Cunninghame of Kildonnane; Johnne Broune, younger of Carlatyre; George Gordoun of Barkeoche; Johnne M^cdowell of Freuche; Patrik Ahannay of Kirkdaill; Alex. M^cculloche, appeirand of Netoun; Alex. Cunninghame of Powtoun; Fergus Dumbar, burges of Stranraer; and Adame Lyndfay, burges of Quthithorne, vnlawit, for thair nocht compeirance vpone the said Assyse; ilk ane of thame in the pane of ane hundredth merkis.

the scherefdome quhair the pannell duellis, (Wigtoun,) or foner, vpone xv dayis wairning. Plegio, Pat M^ddowall de Creoches.

Hurting and Wounding—Masterful Theft and Stouthreif.

Jul. 11.—JOHNE MURRAY, sone to Thomas Murray, in the Stanehous of Geicht.

Dilaitit of the invading of Andro Meldrum of Rothiebirfbane, his maister, in cuming out the hie way betuix Kynrofschyre and the fferrie-fyde : Hurting and Wounding him, with ane fuord, in the heid and face, of purpois to haif flane him : And thaireftir, Steilling and away-taking, be way of maisterfull Thift and Stouth-reif, of his maisteris bonnet-caice, togidder with tua pair of filk schankis,¹ tua pair of filk gairtanes,² tua pair of roses³ of taffitie, tua small lynning schankis, thre bonnet mutches,⁴ thre pair of handis,⁵ fyve overlayeris,⁶ ane peirlet lane⁷ ruff, tua naipkynnis, ane kame-caife,⁸ with ane brusche, with certane vther necessaris, being within the samyn, worth tua hundreth pundis ; by and attour⁹ certane writtis and eidentis,¹⁰ being also thairintill ; committit in the moneth of Maij last.

PERSEWARIS, Mr Andro Meldrum of Rothiebirfbane ; Sir Williame Oliphant of Newtone, kny^t.

THE Justice, in respect thair is nocht ane sufficient number of Assyse compeirand, continewis this dyet to the xxj instantis : And Ordanis the pannell to be tane bak to waird, to the said day.

Andro Frafer of Staniewoid, William Keyth of Seatoun, James Seatoun, brother to the Laird of Mony, Mr Robert Elphingstoun, Tutour of Glak, Johnne Ogilvie, 5ounger of Glassall, and Alexander Frafer, indueller in Leyth, nocht compeirand on Assyse, the Justice ordanit ilk ane of thame to be vnlawit in the pane of ane hundreth merkis.

ASSISA.

Robert Frafer of Durres,	James Hervie of Elrig,	Nicoll 5ule, mercheand,
James Cheane, in Elrig,	Andro Hervie, his brother,	Johnne Penman, mercheand,
Mr Robert Elphingstoun, Tutour	James Keith of Craig,	Mathow Bailzie of Littilgill,
of Glak,	Mr James Stewart, Commiffar	Johnne Fairholme, mercheand,
James Gairne of Blakfurd,	of Dunkeld,	Thomas Broun, lokfmyth.
Johnne Arbutnot of Carnegaw,	Clement Ruffell, mercheand,	

Jul. 21.—THE Aduocat takis instrumentis of the fweiring of the Assyse ; and producet the pannellis Depositiones, for verificatioun of the Dittay ; and protestis for Wilfull Errour, gif thay acquit, &c.

VERDICT. The Assyse, be the mouth of the said Mr Robert Elphingstoun,

¹ Silk stockings. ² Garters. ³ Rosettes for the knees. ⁴ Caps. ⁵ Probably a sort of *mitten*s or gloves. ⁶ A broad folding collar, falling over the shoulders and worn below the ruff, which was fastened about the neck. ⁷ A pearled lawn ruff ? ⁸ Comb-case. ⁹ Over and above: ¹⁰ Writings and Title-deeds.

chancellor, ffand, pronuncet, and declairit, all in ane voce, the said Johnne Murray, conforme to his awin Judiciall Confessioun and Depositiones producet, to be ffylet, culpable, and convict of the haill crymes aboue expremit.

SENTENCE. To be tane to the mercat croce of Edinburghe, and thair to be Hangit, quhill he be deid, and all his moveable guidis to be efcheit, &c.

Taking the King's Free Liege—Famishing one of the Lieges to Death 'in privato carcere.'

Nov. 10.—PATRICK COWIE, in Kincairdin ; Johnne Dow, his servand ; Johnne Anderfone, cordiner thair ; Thomas Cowie, querriour thair ; and David Miller, falter in Eister Kincairdin.

Dilaitit of the taking and keiping of vmq^{le} Thomas Davidfoun, hynd and servand to Alexander Leask, in Porter, be the space of fyftene dayis, *in privato carcere*, within the said Patrik Coweis hous ; and thairfra cayreing him to the pitt of Tullieallane, quhair, throw want of intertenement,¹ he ffamischet and deit of hunger ; and remanent crymes contenit in the Letteris.

PERSEWARIS, Sir Williame Oliphant, kny^t ; Alexander Leask, as Maister.

The Justice continewis this matter to the thrid day of the nixt Justice-air of the Scherefdom quhair the defenderis duellis, (' Clakmannane,') or soner, vpon xv dayis wairning : And Ordanis thame to find new cautionn, &c. ; quha ffand Sir George Bruce of Carnok, kny^t, personallie present, for thair re-entrie.

Mutilation and Demembration.

Nov. 17.—WILLIAME OLIPHANT of Gask.

Dilaitit for airt and pairt of the Demembering of David Malloche, servand for the tyme to vmq^{le} David Toscheoche of Monyvaird of his rycht hand.²

Compeirit Lawrence Oliphant of Coudie, and producet ane Warrant of the Lordis of Secreit Counfall, direct to my Lord Justice ; quhairof the tennour followis.

WARRANT of the Lordis of Secreit Counfall.

JUSTICE, Justice clerk, and your deputtis. Forfamekill as the xvij day of November instant is appointit to Williame Oliphant of Gask, for his compeirance befor you, to vnderly the Lawis for the Mutilioun and Disnembering of David Malloche : Nochtwithstanding, according to the Kingis Maiesteis expres Warrant, command, and directionis in this matter, thease ar to command you to continew the said dyet to the tuentie fyve of Februar nixtocum ; to the effect, in the meane tyme, the said Williame may tak some course for satisfacioun of his partie : And that you tak cautionn of the said Williame for his personall compeirance the said day, and dispense with him and his cautioner for his nocht compeirance at this dyet : Quhairanent thir presentis salbe your Warrant. AT EDⁿ, the xvj day of November, 1619.

AL. CANCELL^r. MAR. MELROIS. LAUDERDAILL.

THE Justice continewis the said dyet to the said xxv day of Februar nixtocum ;

¹ Sustenance.

² See Jul. 29 and Dec. 4, 1618.

³ Peter Oliphant of Rescobie.

and Ordanis caution to be fund for the said Williame Oliphant his compeirance that day, &c.—Gilbert Adamefoun of Scoureing-burne become fouertie, &c.

(Feb. 25, 1620.)—COMPEIRIT Laurence Oliphant of Condie, and producet ane Warrant of the Lordis of Secreit Counsell, quhair of the tennour followis.

JUSTICE, Justice clerk, and your deputtis. Quhair as, the xxv day of Februar instant is appointit to Williame Oliphant of Gask, for his compeirance befor you, to vnderly the law for the slauchter of the Laird of Monyvaird, and mutilatioun and demembring of David Malloche, his fervand, of his rycht hand,¹ and vtheris crymes specifeit in the Letteris raisit thairanent: Neuertheles, this is to command you to continew the said dyet to the nynt day of Junij nixtocum, vpoun new caution, conforme to the ordour: And that you dispens with the personall compeirance of the pairtie: Quhairanent thir presentis fall be your Warrant. At Halyrudhous, the xxiiij of Februar, 1620.

AL. CANCELL^s. MAR. MELROIS. LAUDERDAILL.

Sir Johnne Carmichell of Medowflat, Capitane of Craufurd, becomes fouertie, &c.

(Jun. 9, 1620.)—THE dyet deserted, by command of another Warrant, signed ‘Al. Cancell^s. Melrois.’

[IF it were necessary still farther to prove the melancholy effects of the DEADLY FEUDS which raged in Scotland previous to the Eighteenth Century, perhaps few better illustrations could be adduced than what is contained in the present Case. The following affecting document is taken from the *Denmylne MSS.*, and requires no comment.]

LETTER, the Privy Council of Scotland to the King, relative to the DEADLY FEUD between the Lairdis of Culmalundie and Monyvaird.²

MOST SACRED SOUERANE,

WHEREAS your MAJESTIE was pleaisit, tua yeiris fyne, or thairby, to recommend vnto ws the satling and remoueing, by ane amicable forme and mauer, the deadlie ffeade standing betuix THE LAIRDIS OF CULMALUNDIE and MONYVAIRD and thair ffreindis,³ vpoun occasioun of the slaughter of THE LAIRD OF MONYVAIRD; and to move the pairtie greened to accept of fuche OFFERIS as the offendaris might reafounable performe: WE accordinglie wrote for sa mony of the ffreindis as we know to haif cheif interesse in that mater, and vsed the best meanes we could to haif broght the same to some freindlie dresse; bot that dyet being cassin af, vpoun alledgeance that some of the speciall ffreindis wer omittit and not writtin for, we appointit a new dyet, and wrote for the whole ffreindis that wer gevin vp, who returnit thair answer to ws, in write, vnder thair handis, that thay could not medle in that mater, nor tak burdyne for *Monyvaird*, who is the principall pairtie haueand interessè, in respect of his minoritie. Whairupoun the mater desertit, and we could go no forder thairin. At this secund dyet *Culmalundie eldair* exhibit befor ws OFFERIS, in write, vnder his hand, maid to the pairtie, contening the fowme of ane Thowsand crownes for the Assythement of that Slaughter, with the Banishment of *Alexander Bruce his sone*, and *George Tyrie*, Messinger, who wer alledgeit to be the actuall slayaris of *Monyvaird*, during your MA^s plefour: And at that same tyme, we causit him gif satisfactioun to *Duncane Campbell* and *David Malloche*, who wer deadlie hurte quhen *Monyvaird* was slayne, by payment making to thame of twa Thousand pundis: Quhairupoun thay haif gevin ane discharge of thair interessè in that mater; as the same produceit befor ws beiris.

¹ The local saying,—

‘AFF HANDS IS FAIR PLAY—DAVID MALLOCH SAYS NAY!’

seems quaintly to allude to this incident.

² *Sir James Balfour's MS. Collections*, Adv. Lib.

³ Blood-relations.

This ffeade has altogidder vndone *Auld Culmalundie*; for his eftait is exhaustit and wrackit, and he is become verie waik of his judgement and vnderftanding, by the greif that thir troubles hes brocht vpoun him; whilkis wer the occafion of his wyffis deathe, and of the exyle and banifhment of his fones and freindis, now be the fpace of foure yeiris; in the quhilk exyle, tua of his freindis of goode rank and qualitie hes depairtit this lyffe.

This being the effect of oure dealing in this buflynes, We haif beene intreated be the pairtie, humelie to prefent the fame to your Maieftis confideratioun. And fo continewing our vnceffant prayeris vnto God for youre MA^s long and happie reigne, We reft,

YOUR MA^s humbill and obedient fubiectis and feruitouris,

AL. CANCELL^r. MAR. MELROS. GEORGE HAY.

HALIERUDIOUS, xxj of Marche, 1622.

TO THE KING his moft facred and excellent MAIESTIE.

Taking Captive—Murder—Masterful Theft and Stouthreif.

Dec. 8.—DUNCANE CAMPBELL of Glenlyoun.

Dilaitit of airt and pairt of the violent Taking and Apprehending of vniq^{le} Allane McRannald in Swymart, cayreing and keiping him captiue and priffoner ane nycht, within the faid Duncane his Place of Megernie:¹ And for Mordreifing him with durkis, vpone the morne eftir his taking, ane myle or thairby fra the faid Hous: And be way of Maifterfull Thift and Stouth-reif, fteilling and away-taking fra him of his purfe, with ane thowfeand pundis of gold and filver being thairintill; committed in anno 1601 yeiris.

PERSEWAR, Angus McRannald of Vlladill, as brother.

THE JUSTICE continewis this matter to the thrid day of the nixt Justice-air of the Sheref dome quhair the defender duellis, (Perth,) or foner, vpone xv dayis wairning.

Archibald Campbell of Glencarradell become cautionner for his re-entrie.

Murder.

Dec. 8.—JOHNE MOITT in Wafthouffis, aboue Newbottile.

Dilaitit of the crewall and vnnaturall Murthour and Slauchter of Bessie Broun, his vniq^{le} fpous, be ftreking hir in the heid, and wounding hir thairin with ane grit kent,² to the effufioun of hir bluid; committit be him vpone ane Setterday, at evin, in the moneth of October laft; quhair of fcho deceiffit within tuelff houris thaireftir.

PERSEWAR, Sir Williame Oliphant, kny^t.

PRELOCUTOR in defence, Mr Alexander Cuming.

It is allegit be the pannel, that na proces can be led aganis him, vnles thair

¹ In Glenlyoun, Perthshire. In the preface to Douglas's *Baronage*, notice is taken of a very remarkable Red-book, (*an Leavar-diurig*), written in the Celtic character, which was destroyed in the fire which consumed Miggerny Castle. It is there remarked, that 'some extracts from this book are in the hands of several Families in the Highlands.' See likewise, Prefatory Notice to *HISTORY OF THE KENNEDIES*, Edinburgh, 1830. 4to.

² Staff, or cudgel.

war ane pairtie informer to assist his Maiesteis aduocat, and to sueir the Dittay to the Assyse, the Dittay being found relevant to pas thairto ; and seing nane of the kyn and freindis of the woman flane compeiris to persew, or to informe his Maiesteis Aduocat in this persute, the Justice can nocht put him to ane Assyse. —It is answerit be my lord Aduocat, that the allegiance is impertinentlie proponit be the pannell ; and sayis, that albeit the freindis of the pairtie flane and he wald collude¹ togidder, yit, seing the Prince wantis ane subject, be the fact committit, the Kingis Aduocat hes verrie guid intreis to persew, without ony informer : And thairfoir, nocht only sould the Dittay pas to ane Assyse, bot he, for committing of the ffact lybellit, sould be exemplarie pwneist for the samyn, being fund guiltie thairof.

VERDICT. The Assyse, for the maist pairt, be the mouthe of Thomas Hog, in Eisthouffis, chancellor, stand, pronuncet, and declairit the said Johnne Motte to be ffylet, culpable, and convict of the said Slauchter.—SENTENCE. To be tane to the Castelhill of Edinburghe, and thair his heid to be strukin frome his body ; and his haill guidis to be escheit, &c.

Slaughter—Clearing and Shooting of Hagbuts and Pistolets.

Dec. 22.—JOHNE LYDDELL of Halkerstoun.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Johnne Bell, servand to Johnne Lord Borthuik ; committit vpon the landis of Hauch-heid, vpon the aucht of October last, quhair the said Johnne Lyddell, with ane charget hagbut in his hand, invaidit the said vmq^{le} Johnne Bell for his slauchter, schote him in his lichting² af his horse with tua bullettis, at the left pape, throw the heart ; and slew him with the said schote : And for contravening of the Actis of Parliament, in beiring and schuiting of hagbutis and pistolettis, &c.

The Justice, of consent of aither pairtie, continewis this matter to the nyntene of Januar nixt : And Ordanis the pannell to be returnet to Waird to the Tolbuth of Edinburghe, out of the quhilk he was tane.

PERSEWARIS, Barbara Levingstoun, the relict ; Sir Williame Oliphant of Newtoun, kny^t, his Maiesteis Aduocat, for his lienes intreis.

PRELOCUTORIS in defence, James Lyddell, in Leyth ; Mr Johnne Cranstoun, Minister thair ; Mr Laurence McGill, and Mr David Prymrois, Aduocattis.

(Jan. 19, 1620.)—IT is allegit be the pannell, that the Dittay in that point thairof, ‘ airt and pairt,’ is nocht relevant, except the persewar condiscend vpon the names of the persones that war complices or associattis.—Answeris, aucht to be repellit, in respect of the Act of Parliament, sustening airt and pairt to be

¹ Enter into collusion with each other, to defeat the ends of public justice. ² Alighting.

relevant aganis any persone accuset of ane cryme.—The pannell denyis the hail Dittay to be of verritie.

THE JUSTICE remittis the tryell thair of to the Assyse.

Barbara Levingstoun, relict, being solemlie sworne, declairit, that the Dittay is of verritie; and that selo hes just caus to persew the pannell for the Slauchter of hir husband. Quhairvpoun my lord Aduocat askit instrumentis, and Protestis for Wilfull Errour aganis the Assyse, gif thay acquit: As also, tuik instrumentis of the production of the hagbut, quhairwith the said vmq^{le} Johnne Bell was flane.

VERDICT. The Assyse, be pluralitie of voittis, ffand, pronuncet, and declairit the said Johnne Lyddell of Halkerstoun to be Clanget, innocent, and acquit of the said Dittay, and hail crymes aboue writtin mentionet thairintill.

In respect quhair of, the Justice ordanit him to be put to libertie furth of the said Tolbuth of Edinburghe, quhairin he was wairdit, and na langar to be detenit thairintill for the saidis crymes; he making satisfioun to the javellour¹ for his expensis.

Slaughter.

Jan. 19, 1620.—ALEXANDER GRAHAME, sone to vmq^{le} David Grahame, in Arduthie, and Johnne M'kane, sone to Williame M'kane, burges of Montroise.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Mr Alexander Keith, brother to Sir George Keith of Drumtochtie; committit be thame, in companie of Robert Grahame, brother to the said Alexander, vpone the Sandis of Montrois, vnder nycht, vpone the tent of December last.

PERSEWARIS, Sir George Keith of Drumtochtie, kny^t, James Keith of Harviestoun, Mr Williame Keith, brother to the defunct; and Sir Williame Oliphant, kny^t.

PRELOCUTOURIS in defence, Mr Alexander Peiblis, Mr Roger Mowat, Aduocattis.

The persewaris producet Hoirning aganis Robert Grahame, sone to David Grahame of Arduthie.

The persones on pannell offerit thame felffis to the tryell of the Law, for the crymes contenit in the Summondis, quhair of thay declairit thame felffis to be innocent; disaffenting *simpliciter* to all forder continuatioun.—My lord Aduocat declairis that this Slauchter was committit vnder nycht, quhair of as yit na certane licht of the pannellis guiltines thair of is brokin vp; and thairfoir, desyres thame to be put vnder cautioun, for thair re-entrie, vpone xv dayis wairning.

THE Justice continewis this dyet to the thrid day of the nixt Justice-air of the Scherefdom quhairin the pannell duellis, (Forfar,) or soner, to ane fyftene dayis wairning.

¹ Gaoler; jailer. Old Fr. *javilleur*.

Slaughter.

Jan. 21.—**JOHNNE DUNCANE**, baxter¹ in Dudingstoun.

Dilaitit of the crewall Slauchter of vmq^{le} Johnne Buchannan, baxter, indueller of the Cannongait; committit in the hie-way betuix Eifter and Wester Dudingstoun, vpon the saxt of Januar instant, be streking of the said Johnne Buchannan with ane knyfe, vnder the left pape; quhairof, within tuelf houris thair-eftir, he deceissit.

PERSEWARIS, Margaret Robertfoun, the relict; Sir Williame Oliphant, kny^t.

The pannell acknowledges the cryme, and craves God, his Maiestie, and the pairtie pardoun thairfoir.

VERDICT. The Assyse, all in ane voce, in respect of the pannellis Judiciall Confessioun maid be him, confessing the said cryme to be of verritie, ffand, pronuncet, and declairit the said Johnne Duncane to be ffylet, culpable, and convict, &c.—**SENTENCE.** To be tane to the Castell hill of Edinburgh, and thair his heid to be strukin from his body; and all his moveable guidis to be escheit to his hienes vse, as convict of the said cryme.

Murder—Horse-stealing.

Feb. 25.—**JAMES REOCHE.**

Dilaitit of airt and pairt of the crewall Murthour and Slauchter, vnder nycht, of vmq^{le} Alexander Sandiesone, fervand to Hew Falconer of Innerlochtie; committit in September, vpon Michelmes Evin, in anno 1618, at the zett of Innerlochtie, in staying the said James, and resisting him and his brother in the steiling and away-taking of the said Hew Falconeris horse furth thairof, be schuteing the said Alexander throw the body with ane pistolett.

PERSEWARIS, Hew Falconer of Innerlochtie, his maister; Sir Williame Oliphant of Newtoun, kny^t.

It is alleget be the pannell, that the allegit Slauchter was nocht committit be him; bot the defunct, being ravischeing ane woman, the pannellis brother being thair present, and he in companie with him, imployit thair help to preserve the woman and to set hir frie; for the quhilk, the defunct, haifing ane knyfe in his hand, invalidit the pannellis brother thairwith; quhairupoun the pannellis brother, for his awin saiftie, drew ane pistolet frome his fyde, and schote the defunct thairwith; and sa, the fact being committit be his brother, the pannell can nocht be perfewit thairfoir.—It is ansuerit be my lord Aduocat, that the allegeance aucht to be repellit, in respect of the Dittay beiring him to be airt and pairt of the defunctis slauchter; and that the Slauchter was committit be thame in the steiling of ane horse fra the defunctis maister, haifing cum that eirand to the Hous, at that tyme of the nycht.

¹ Baker.

ASSISA.

Mr James Stewart of Ladywall, Mr James Forbes of Haughtoun, Alex. Farquhar, tailzeour burges of
 Walter Hay in Forrefteris-fait, Johnne Roife, proveist of Nairne, Edinburgh,
 Williame Douglas of Erlefmylne, Mr David Stewart, and Johnne Caddell, burges of
 Alex^r Brodie, chalmerlane of Patrik Weymes, fervandis Edinburgh,
 Kinloife, to the Earl of Murray, Alex. Home, burges thair,
 David Dumbar in Tarves, Thomas Hunter, burges thair.

The Aduocat takis instrumentis of the fuering of the Assyse; and producet, for instructing the Dittay, the pannellis Deposition, maid in presens of the Lordis of Secreit Counsell; and protestis for Wilfull Errour, gif thay acquit.

VERDICT. The Assyse, all in ane voce, fand the said James Reoche to be fyylet, culpable, and convict of airt and pairt of the Slauchter of the said v^mq^{le} Alexander, committit vnder nycht, in the steilling of the said Hewis horse.—

SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair his heid to be strukin frome his body; and his haill guidis confiscat to his Maiesteis vse.

Hamesucken—Slaughter.

Mar. 8.—JOHNNE ROGERSOUN, in Bratmureland.

Dilaitit of the crewall Slauchter of v^mq^{le} Katharene Broun, spous to Hew Broun in Windiehillis,¹ be (by) cuming be (by) way of Hamesuckin to hir duelling hous in Windiehillis, in the moneth of Apryle 1613 yeiris, quhair scho was in sober maner for the tyme; and thair crewallie invaidit hir for hir slauchter, becaus scho had houndit hir dog at his scheip; tuik hir be the spaldis,² and violentlie slang hir over tua kyis³ bakis; thaireftir threw hir fydis to ane tymber bed,⁴ and thairby brak hir haill intrallis within hir; and thaireftir, with his feit and handis, crewallie punschet and strak hir vpon the bak, wambe,⁵ and fydis, and brak hir heart-pypes thairwith; sua that thairby scho tuik bed, and keipit the bed the space of sax dayis, or thairby, continuallie vomeiting hir heart-bluid; and in the moneth of Maij thaireftir, scho deceifit of the saidis hurtis; and sa, was crewallie and vnmerciefullie flane be the said Johnne Rogerfonne: And he is airt and pairt of the said slauchter; committit vpon set purpois, prouisioun, and foirthocht felonie, as at lenth is contenit in the said Dittay.

PERSEWAR, Hew Broun in Windiehillis, as spous to the defunct.

PRELOCUTOURIS in defence, the Laird of Cloisburne; Adame Cunninghame, Aduocat.

The pannell offeris him selff to the tryell of the law for the crymé foirsaid, quhairof he is altogidder innocent.

ASSISA.

Johnne Padzeane, younger of Newtoun,

Thomas Wauche, elder of Schawis,

Mr Alexander Flemyng, minister at Dalgarnok,

Thomas Wauche, his sone.⁶

¹ The crime is thus briefly described in another place,—‘ be geving hir dyuerse bauch, blae, and blodie straikis, in dyuerse partis of hir bodie.’ ² Fr. *épaules*, shoulders. ³ Cows. ⁴ That is, dashed her with violence against or upon a wooden bedstead. ⁵ Belly. ⁶ The rest of the Assise are persons of no note.

VERDICT. The Affyse, all in ane voce, be the repourt and declaratioun of the said Mr Alexander Flemyng, chancellor, ffind, pronuncet, and declarit the said Johnne Rogerfoun to be Clene, innocent, and acquit of airt and pairt of the slauchter, and hail circumstances thair of specifcit in his Dittay.

Forgerie—Falsct—Counterfeiting a Subscription to a false Bond.

Apr. 20.—THOMAS DEMPSTER, sunntyme of Murefk.

Dilaitit of airt and pairt of the falssefeing, fforgeing, and devyseing and counterfuteing of the subscripcioun of ane falsse Band of Reuerfioun, &c. specifcit in his DITTAY following, viz.

FORSAMEKILL AS, albeit the said Thomas, be his birth, was ane gentilman borne, provydit, be vertew of his parentis and prediceffouris, to the succeffion and richt of dyuerse landis, rowmes, and possessiones; the quhilkis, be his leud and godles misgovernment, ar maist schamefullie and vnworthielie spendit and put away, to the impoverisheing alsweill of him selff, as preiudice and disapointment of his posteritie: SIT the said Thomas, altogidder sensles of that his miserable cairage, nawayis being movet thairwith, bot rather resolveing to rwn heidlongis in all godles and cruiket courfes, as a man fault and gevin over to the practize of the samyn; amangis vtheris, his vnlauchfull and damnable proceedingis, a fourtene 3eir fyne or pairby, he maist fallie, fraudulentlie, and dissaitfullie plottit, devysit, forget, and drew vp ane false and counterfute BAND, contening the tennour of ane fals and simulat Reuerfioun, as gif the samyn had bene maid and subferyuit be vmq^{le} *Walter Barclay of Toweis*, quhais name and subscripcioun was also fallie counterfute be the said Thomas, with the Witnesfes subscripciones insert thairintill; beirand in effect, that the said vmq^{le} *Walter Barclay* confessit and grantit him to haif ressauit fra vmq^{le} *James Dempster of Auchterles*, his father, ane Reuerfioun maid and subferyuit be vmq^{le} *Patrik Barclay*, sunntyme of *Towie*, his father, in fauouris of vmq^{le} *Johnne Erle of Buchan, Lord of Glendovachie*, subferynit at the *Castle of Banff*, the first day of July 1547 3eiris, for redemeing and outquyteing fra the said vmq^{le} Patrik and his airis, *Lairdis of Towie, of the Landis of Collane*, with the fischer-heaven and remanent pairtis, pendicles, and pertinentis of the samyn, lyand within the Lordschip of Glendovachie, and Sherefdom of Bauff, vpone payment and delyuerance of ane handreth angell-nobles gold and wecht; with ane nyntene 3eir Tak, eftir the Redemptioun, contening frie Office and iurisdiction of Bailzerie, with payment of thre-scoir merkis, as for the 3eirlie maill thair of allanerlie: And that be vertew of the foirsaid simulat Band, the said vmq^{le} *Walter Barclay of Toweis* obleist him to delyuer bak agane the samyn Reuerfioun to the said *James Dempster*, father to the said Thomas, at quhat tyme or how sone it fould happin him, and his airis, to be distressit or put at for delyuerie, or exhibitoun of the samyn, be the airis maill of the said vmq^{le} *Erle of Buchan*, and vtheris haiffand richt thairto; and thairwith to pay to the said *James Dempster* and his airis, the soweime of ten thowfeand pundis of liquidat expensis, in caice of failzie: As the said Band, contening the tennour of the said fals Reuerfioun, with dyuerse vtheris clauffes at lenth set down thairintill, all fallie fforget, devysit, and counterfute, first be the said Thomas, and thaireftir writtin over at his command and directioun be *Airthour Meldrum*, Scule-maister and Reidar at Kintor, and ante-daitit be him, at the said Thomas command, at Lambes last, daitit at Mure-fk, the first day of October 1585, be the space of threttie-foure 3eiris of befor, in the selff proportis. LYK AS, in ane actioun of Improbatioun intentit laillie befor the Lordis of Counsell and Sessioun, at the instance of *Sir Patrik Barclay*, now of *Towie elder*, and *Patrik Barclay younger* his sone, with concurrence of our fouerane lordis Aduocat, for Improbatioun of the foirsaid Band and Reuerfioun, ingrossit thairintill, the saidis Lordis of Counsell and Sessioun, efter tryell tane be them in the premiffes, hes ffind and declarit be thair Decreit, gevin vpone

the secund day of Marche instant, conforme to the said *Thomas* awin Confessioun and Deposition, subscryuit be his awin hand, in thair haill Lordschippis presens, that the foirsaid Band and Reuersioun foirsaid, ingrossit thairintill, is fals and fenzeit, falllie forget, fabricat, and devyset be the said *Thomas*, and the said *Airthur Meldrum*, at his command and directioun : And that the said *Airthur*, be his command and directioun, counterfute the names and subscriptiones of *Patrik Chalmer*, *Alexander Fraser*, and *Alexander Watfoun*, thre of the Witneses insert thairintill : And that the said *Thomas* him selff counterfute, and pat to with his hand the name and subscription of the said vmq^{le} *Walter Barclay of Towie*, allegit maker of the said Band, with the names of *George Leslie*, and *James Innes*, uther tua Witneses insert thairintill : AND in respect thair of, the samyn Band was, be thair Lordschippis directioun, in thair Lordschippis presens, immediatlie cuttit, cancellit, and destroyit, and declairit to mak na fayeth in judgement, nor outwith, in tyme cuming : AND the said *Thomas*, for his former falsset, (was) also Ordanit be the saidis Lordis Decreit to be pwneist in his persone and guidis, conforme to the lawis of this realme ; quhilk aucht and sould be execute vpone him with all rigour, to the terrour and example of vtheris to attempt the lyk. As the saidis Lordis Decreit, togidder with the said *Thomas*, his awin and the said *Airthur Meldrumes* Depositiones, confessing cleirly the falsset aboue writtin, product be our said fouerane lordis Aduocat with the Dittay aboue specifeit, for verificatioun thair of, at lenth beiris.

The pannell allegit, that in respect the falsse Reuersioun quhairupoun he is accuset, was nevir vsct nor abiddin at be him, to the hurt of *the Laird of Towie* or ony vther, that thairfoir the Justice could nocht put him to ane Assyse.—It is answert be my Lord Aduocat, that the allegiance aucht to be repellit, in respect of the Dittay, and of the Lordis Decreit, quhairupoun the samyn is foundit, finding the Reuersioun to be falslie fforget be the pannell, and that *the Laird of Towie's* subscription was falllie counterfute, and put thairto be the pannell ; and thairfoir Ordaning him to be pwneist, conforme to the Lawis of this realme.

THE Justice Repellis the pannellis allegiance, in respect of the answert ; and Ordanis the Dittay to pass to ane Assyse.

ASSISA.

George Logane of Bonytoun, elder,	James Halyburtoun, mercheand,	Archibald Law, goldsmyth,
William Lander, bailzie of	Patrik Elis, 3ounger, mercheand,	Harie Hoip, mercheand,
Dumbar,	Capitane Patrik Heiring,	George Hammiltoun, mercheand,
Malcolme Stevinsoun, Tutour of	Johnne Dougall, mercheand,	Eduard Johnnestoun, mercheand,
Hirdmestoun,	Johnne Schaw, mercheand,	William Crystiesoun, tailjour.
Michell Ramfay of Forther,	Johnne Smyth, mercheand,	

VERDICT. The Assyse, be the repourt and declaratioun of the said Chancellor, all in ane voce, fstand, pronuncet, and declairit the said *Thomas Dempster* to be fflyet, culpable, and convict of the haill falssettis set down in his Dittay aboue writtin.—SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair his heid to be strukin frome his body ; and all his moveable guidis and geir pertening to him to be escheit to his Maiesteis vse, &c.¹

¹ The frequency of the crime of Forgery, during some years preceding the date of this Trial, seems to have induced the Public Prosecutor to make several severe examples. Not a few of the criminals were persons of considerable rank in society, who, by desperate courses, had been reduced to the worst shifts to procure the means of subsistence.

Murder.

JUN. 14.—ROBERT HODGE in Spitteltoun, and James Mitchell, myller at Dalmahoy mylne.

Dilaitit of airt and pairt of the Slauchter and Murthour of vmq^{le} Patrik Mitchell, skynner; committit in Marche last or thairby, be streking him with kentis and flailis, in dyuerse pairtis of his body, and douking him in the mylneleid or dam of Dalmahoy-mylne; quhair of he within xxiiij houris deceffit.

PERSEWAR, Johnne Mitchell in Langfyde, as father.

PRELOCUTOURIS in defence, Mr Robert Lermontie, The Laird of Dalmahoy.

THE Justice continewis this dyet to fryday nixt.

JUN. 16.—COMPEIRIT Johnne Mitchell, persewar, and declairit that the perfonen on pannell ar altogidder innocent of the crymes contenit in the Letteris; and thairfoir he past *simpliciter* fra thair persute, as innocent thairof.—The pannell takis instrumentis of the persewaris Declaratioun, and passing *simpliciter* fra thair persute; and nochtwithstanding thairof, offerit thame selfis to the tryell of the Law for the said allegit crymes, seing thair is ane sufficient number of honest men heir present, quha war summoned be the persewar to pas on thair Assyse, and quha best knowis the verritie of that matter; and thairfoir, as of befoir, desyret my lord Justice that thai mycht be put to ane tryell, &c.

THE Justice, in respect of the persewaris declaratioun and passing fra the pannellis persute, Ordanis the dyet to desert; and na Letteris to be direct aganis thame, in this matter, in ony tyme cuning, at the instance of thir persewaris.

Murder committed under Trust and Friendship.

JUN. 16.—HARIE GORDOUN of Haddo.

Dilaitit of the crewall Murthour and Slauchter of vmq^{le} Johnne Johnnestoun, servand and neir kynfinan to the Laird of Caskieben, be schuiting him throw the body with ane double musket, charget with fyve bullettis, vnder trust and freindschip, at the dur of the said Hareis duelling-hous, the xxiiij of Marche last.

Robert Johnnestoun, in Corshill, as father to vmq^{le} Johnne, togidder with Sir Williame Oliphant, producet the Letteris, deulie execute and indorfate, &c.

THE Justice Ordanit Adame Gordoun of Boighoill, as cautioner, to be vnlawit for nocht entrie of the said Harie, in the pane of Tua hundreth merkis: And siclyk, that the said Harie be denuncet rebell and put to the horne, and all his moveabill guidis to be escheit, &c.

Murder by Drowning, &c.

JUN. 16.—DONALD NEILSONE of Affint, Neill Neilfone, his sone, and Neill M'Eane Allaister.

Dilaitit for taking vmq^{le} Donald M^cAllaister V^cEane V^cHenrie, binding him hand and fute, and casting him in ane boit; and thaireftir cayreing him to ane craig¹ in the Sea of Clafneffie, in Afflint, quhair the fie overflowing the said craig, he was pitiefullie² drownit and cayreit away to the grit Ocean-fie; and fa, crewallie Murthouret be thame.

Michaell Anderfone, tailzeour in the Potter-raw, as cautioner, amerciatis for nocht repoirting of the Letteres deulie execute and indorfate, and perfewing thairrof, purcheft at the instance of Johnne M^cAngus V^cHenrie, neir kynnifman of the said vmq^{le} Donald, viz. 100 merkis for the said Neill M^cEan Allaister; and for the vther tua defenderis, ather of thame in tua hundreth merkis.

Slaughter.

Jun. 20.—WILLIAME JOHNESTOUN, elder of Kellobank; Williame Johnnestoun, 3ounger, his sone; and Johnne Johnnestoun, also his sone.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Williame Johnnestoun of Kynnel-heid; committit in anno 1619.

PERSEWAR, Jeane Johnnestoun, as dochter.

ASSISTERIS of the perfute, Robert Johnnestoun, callit of Mosspe, Thomas Johnnestoun of Beirholme, James Johnnestoun of Erschag.

PRELOCUTOURIS in defence, Mr Thomas Nicolfone, elder, Mr Laurence M^cgill (Advocates.)

The perfewaris passis *simpliciter* fra the pannellis perfute, for the crymes foirfaidis: Quhairvpone the pannell askit instrumentis.

Continued, ‘for the Kingis pairt,’ to the third day of the next Justice-air, or sooner, on xv days warning.

Taking captibe and prisoner—Oppression, &c.

Jul. 12.—WILLIAME GARIOCHE, sone to James Garioche of Kinstair, and Thomas Anderfone in Awfurd.

Dilaitit for being in companie with *Alexander Forbes*, funtyme of *Toweis*, vpone the xxj day of Januar, 1620 last, bodin³ with foure pistolettis and tua lang gwnes, fuordis, durkis, and vtheris wappones *invasuë*; and cuming airlie in the moirning, befor the brek of day, to the duelling-hous of George Garioche, in Tuliechetlie, sone-in-law to Johnne Bonar, in Tulliechetlie, quhair the said Johnne was, in sober and quyet maner, for the tyme, lying in his bed; and be plane force and violence entering within the said hous, pat violent handis in the persone of Barbara Forbes, ane servand thairrof, drew hir to the ffyre, and in maist barbarous and crewall maner held hir aboue the famyn, thraitning to cast hir thairin,

¹ Craig, or rock.

² Piteously; lamentably.

³ Furnished; provided.

and to burn hir quick,¹ gif scho reveillit nocht to thame quhair the said Johnne Bonar was : AND lykwayis, ffor the putting violent handis in the persone of Robert Broun, ane vther fervand of the said hous, and halding ane drawin durk to his breift, thraitning to strek him thairwith, gif he also reveillit nocht to thame quhair the said Johnne Bonar was for the tyme : AND last, vpone knowlege gevin to the said Alexander Forbes of Toweis and his complices, that the said Johnne Bonar was in his bed within the said hous, ffor thair cuming to him to his bedfyde, and drawing him furth of his bed in maist violent maner, taking him captiue and prissoner, and cayreing him furth of the said hous be the space of tua myles, to the watter of Lochell, and douking² him dyuerse tymes thairin ; and thair compelling him to yeild to the furneissing to the said Alexander Forbes, and delyuering to him of flyve hundreth merkis money ; and becaus of the said Johnne Bonar his refusall of performeing thaireftir of his promeis, ffor cayreing him with thame, as ane captiue and prissoner, to the duelling-hous of Robert Merfar of Edindowie, and keiping him thairin, as ane captiue and prissoner, be the space of tua dayis and tua nichtis togidder : AND for beiring and weiring of hagbuttis and pistolettis, contrair the tennour of the Actis of Parliament.

Compeirit personallie the said Williame Garioche and Thomas Anderfones, and maist willinglie offerit thame selffis to the tryell of the law, disassenting *simpliciter* to all maner of continuation : And thairfoir protestit for thair cautioneris (Mr Williame Forbes of Craigievar, and Alexander Hill, litster,³ burges of Aberdene) releif.—Compeirit on the vther pairt, Johnne Forbes, elder of Brux, as procurator, speciallie constitute, for the said Johnne Bonar, persewar, and be vertew of ane Letter of procuratioun, subscriuit with his hand, of the dait the aucht day of July instant ; bearing, that the said Johnne, in regaird of his grit age and inhabilitie to travell to the keiping of this dyett, and that he vnderstuid the saidis Williame and Thomas, quha had fund cautionne, war innocent of the haill crymes aboue writtin, Ordanit the said Johnne Forbes of Brux to pas *simpliciter* fra thair persute, &c. Quhilk protestatioun the Justice admittit.

House-breaking—Stouthcreif—Theft.

Jul. 21.—PATRIK GRANT of Davachmoir ; Duncane Grant, in Wester Bunlody ; James M^callaster Vic Eane Oig, in Inchebroun ; Ewin M^cneill V^cquyane, in Littill Clwne.

Dilaitit for breking of Johnne Grant of Glenmoriestoun his hous of Belmacaene, in Vrquhart ; breking vp of fourtene lokit kiftis⁴ being thairin ; steilling and away-taking of certane guidis and geir being within the saidis kiftis, all pertening to the said Johnne Grant ; committit in Apryle, 1615 yeiris.

¹ Alive.

² Ducking.

³ Dyer.

⁴ Locked chests.

PERSEWAR, Johnne Grant of Glenmoriestoun.

The persewar passis *simpliciter* fra the perfute of the said Ewin ; and declairis him to be innocent thair of.

Continued to the thrid day of the nixt Justice-air of the scherefdom quhair thay duell, or soner, vpon xv dayis wairning. Johnne Grant, appeirand of Ballindalloche, become fouertie, &c.

Taking captive—Oppression—Starving to death.

Jul. 26.—ROBERT M'COULE, in Wester Kindrogine ; Robert Glas, thair ; and Johnne Bowy M'kerra Dowy, in Straloche.

Dilaitit for Usurpation of our souerane lordis authoritie, in taking of vmq^{le} Allaster M'gilliemule, in Innerdrie, ane simple puir man, furth of the duelling hous of Johnne Roy M'gilliemule, vpon the landis of Bordland, within the scherefdom of Perth, binding him hand and fute, and cayreing him, as ane captiue and prissoner, with thame to the Castell of Blair, in Athole, and stryppit him naikit of his claithe, and thaireftir casting him in the pit of the said Castell, quhair, in the deid tyme of winter, viz. in December last, he fameischet with hunger and cald, eftir he had remanit foure dayis and foure nichtis thairintill : And thaireftir cayreing him out of the said pitt to ane gibbet (being deid) vpon the landis of Blair, quhair thay hang him vp as ane malefactor, but power or commissioun gevin to thame, or ony preceeding tryell tane of his guiltines of ony cryme.

THE Justice ordanit Johnne Fergusone of Belnacult, in Straloche, as cautioner and fouertie, to be vnlawit for nocht entrie of ilk ane of the saidis personis, in the pane of ane hundreth merkis : And siclyk, that thay fall be denuncet rebellis and put to the horne, and all thair moveabill guidis to be escheit, &c.

Hurting and Wounding—Demembration.

Nov. 3.—JOHNNE STEWART of Hulreid ; James Blaikwoid, his fervand ; and Johnne Pollok, sone to Johnne Pollok, in Caldecottis.

Dilaitit of airt and pairt of the crewall Hurting and Wounding of Johnne Allanfone, sone to Andro Allanfone, in Waterfute, in his heid, be geving to him of sevin bludie woundis thairintill, tua crewall woundis in his schoulderis and airmes : As also, of dismembring him of his thombe and thre fingeris of his left hand ; committit vpon the landis of Gorballis, pertening to Sir George Elphinstoun of Blytheswoid, kny^t, in his cuning frome Glasgou to his fatheris hous, in Watterfute, in the moneth of Junij last ; vpon set purpois, prouisioun, and ffoirtocht ffellonie.

PERSEWAR, Johnne Allansone.

PRELOCUTORIS in defence, Mr Thomas Hoip, Mr James Hammiltoun.

It is allegit be Mr Thomas Hoip, as prelocutour for Johnne Stewart of Hulreid, that the Dittay can nocht be put to ane Assyse aganis the said Johnne, nor his men, becaus per Legem, *si quis in rixa*, &c. ; quhair ane persone, callit for ane cryme and is fugitiue thairfoir, the remanent persones, his allegit complices, enterand, can nocht be tryit be ane Assyse, or persewit for the samyn : As also, he takis instrumentis of that poynt of the Dittay, beirand the fact lybellit to be committit vpon foirthocht felonie. It is forder allegit be Mr Thomas, that the Dittay is nawayis relevant to pas to ane Assyse, for Dismembring, feing the persewar wantis nocht ane member, bot onlie his thombe and tua fingeris, *quia digitus non est membrum, sed tantum pars membri*.

Mr James Hammiltoun, as prelocutour for Johnne Pollok, takis instrumentis, that the persewar is willing to pas fra the said Johnne Pollokis persute *simpliciter*, as altogidder innocent of the cryme lybellit ; and protestis, in caice he persew nocht Pollok, that the persewaris cautioneris be vnlawit : And thairfoir, in respect of Pollokis innocencie, he offeris him to the tryell of ane Assyse. Takis instrumentis also of the persewaris declaratioun, beirand that he nevir saw the said Johnne Stewart and remanent persones on pannell befoir his cuming to the grund of Gorballis, that day of his hurting thairupoun ; as also, that Johnne Stewart said thease wordis at that tyme, ' It is ane mervellous matter we can nocht get James Pollok and Johnne Allansone red ! '

THE Justice repellis the allegeances aboue writtin, concerning the Law allegit be Mr Thomas Hoip, and concerning the dismembring, in respect of the Dittay : And Ordanis the samyn to be put to ane Assyse.

VERDICT. The Assyse, all in ane voce, stand the saidis Johnne Stewart, James Blaikwood, and Johnne Pollok to be Clene, innocent, and acquit, &c.

Slaughter.

Nov. 17.—JAMES MURE, in Dalmahoy,¹ and Thomas Aikman, thair.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Johnne Weir, in Dalmahoy ; committit with stanes, rungis,² and vtheris wappones *invasiue*, vpon the last day of September lastbypast, vpon set purpois, prouisioun, and foirthocht felony.

PERSEWARIS, Margaret Wynrahame, the relict ; Thomas and William Weir, brether.

PRELOCUTOUR in defence (for Thomas Aikman), Mr Robert Lermonthe.

VERDICT. The Assyse, all in ane voce, stand the said *Thomas Aikman* to be Cleane, innocent, and acquit : And siclyk, that the said *James Mure* is Giltie, culpable, and convict of the said slauchter.—SENTENCE *against Mure*. To be tane to the Mercat croce of Edinburghe, and thair his heid to be strukin froime his body ; and all his moveable guidis to be escheit, &c.

¹ See Jun. 14, 1620.

² Cudgels ; staves.

Slaughter.

Dec. 1.—**JOHNE BROWN**, tail⁵our, hantand¹ in Craufurdmure.

Dilaitit of airt and pairt of the crewall Slauchter of vmq^{le} James Williamfone, in Glengeich ; committit the xxvj day of November lastbypast, within the duelling hous of Johnne Gibfone, elder, in Craufurdtown, be hurting him with ane fuord in the heid, airmes, and vtheris pairtis of his body ; quhairof, vpone the morne thaireftir, being the xxvij day of November, at tuelf houris in the day, he deceiffit.

PERSEWARIS, Symone Williamfone, burges of Edinburghe, and Robert Williamfone, brethir to the defunct ; James Williamfone, brother-in-law ; Sir Williame Oliphant, kny^t.

ASSISA.

Mathow Bailjie, of Littillgill,

Thomas Johnnstoun of Beirholme,

Mr James Bailjie, fone to Mathow,

Williame Tail⁵efeir of Herklaw,

Johnne Makmath of Corfbank,

Johnne Vmphray in Glenmuklek.²

The said Robert Williamfone, brother to the defunct, fuoir the Dittay to be of verritie : Quhairvpoun my lord Aduocat askit instrumentis ; and protestit for Wilfull Errour aganis the Assyse, gif thay acquit.

VERDICT. The Assyse, all in ane voce, be the declaratioun of the said Mathow Bailjie, chancellor, fand the said Johnne Brown to be ffylet, culpable, and convict of airt and pairt of the said crewall Slauchter.—**SENTENCE.** To be tane to the Mercat-croce of Edinburghe, and thair his heid to be strukin frome his body ; and all his moveabill guidis to be efcheit, &c.

Slaughter.

Dec. 15.—**SIR JAMES MAXWALL** of Calderwoid, kny^t ; Alexander Lyndsay of Dunrod ; Johnne Lyndsay, his brother naturall ; and James Maxwell, fone to Williame Maxwell of Newlandis.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Alexander Lekkies of that ilk ; committit in September 1601 yeiris.

PERSEWARIS, Alexander Lekkies of that ilk, as fone ; Adame Cuninghame of Markinfche, the spous of Euphame Maxwell, relict of the said vmq^{le} Alexander, for his intreis ; Sir Williame Oliphant of Newtoun, kny^t, Aduocat to our fouerane lord.

PRELOCUTOUR in defence, Mr Thomas Hoip, Aduocat.

The Justice, conforme to ane Warrant of the Secreit Counfall, direct to him, quhairof the tennour followis :

JUSTICE, Justice Clerk, and 3our deputis. Quhairas the fyftene day of December instant is appointit to Sir James Maxwell of Calderwoid, kny^t, W^m Maxwell of Newlandis, James, Jⁿ, and James Maxwell his fones, Alex^r Lyndsay of Dunrod, and James Wauchope in pe Airdis, ffor pair compeirance befor 3ow, to vnderly the lawis for the Slauchter of vmq^{le} Alex^r Lekkies of pat ilk : Nochtwithstanding, for certane caussis moving ws, it is our will, and we Command 3ow to continew pe said dyet, vntill the

¹ Dwelling, but having no fixed residence.

² The rest of no note.

sextene day of Januar, in the 3^{er} of God I^m.Vj^c. tuentie tua 3^{er}is: And that 3e tak new cautioun of thame, conforme to the ordour. Quhairanent thir presentis fall be 3our Warrant. AT EDⁿ, the tuelf day of December, 1620.

AL. CANCELL^s. MAR. MELROIS. NITHISDAILL. LAUDERDAILL. CARNEGIE.

Continewis this dyet to the said xvj day of Januar, in anno foirsaid.—Sir Alexander Hammiltoun of Innerweik, kny^t, elder, and Alexander Levingstoun of Belstane, become pleges and fouerteis for the entrie of the saidis Sir James, &c.

(Jan. 16, 1622.)—SIR James Maxwell compeirit, and personallie producet ane WARRANT of the Lordis of Secreit Counfall, proceeding vpone ane Supplication gevin in by thair Lordschippis; quhair of the tennour followis.

MY LORDIS OF SECREIT COUNSALL, vnto 3our L. humlie meanis¹ and schawis, we 3our seruitoris, *Sir James Maxwell of Calderwoid*,² sone to vmq^{le} *William Maxwell of Newlandis, Alex^r Lyndsay of Dunrode*, and *Joⁿ Lyndsay*, his brother naturale, That quhair, the sextene day of Januare nixtocum is appointit to us for our compeirance befor his Maiesteis Justice, to vnderly the Law for the Slauchter of vmq^{le} *Alex^r Lekie of that Ilk*, at the quhilk day the Justice intendis to proceed in this matter; albeit it be of verritie, that be pe mediatioun and travellis of some weil affectit Noblemen, Barrones, and Gentilmen, commoun and indifferent³ freindis to both us pairteis, who hes delt and travellit betuix us, for bringing of this vnhappie ffeid, whilk hes bene of so long continuance betuix our Houffis, to some termes of aggrement and reconciliatioun: Thay brocht pe matter to this poynt, that I, pe said *Sir James*, fall superceid and continew the profecutioun and following out of pe actioun of Reducioun, quhilk I haif presentlie in dependance befor pe Lordis of Counfall and Sessioun, aganis pe said *Laird of Lekkie*, and that I fall suffer the same to rest and sleip⁴ till pe said faxtene day of Januar nixtocum; and that the Criminall dyet foirsaid, appointit for our Tryell befor pe Justice, fall be continewit till Witfunday nixt; to the effect, that in this meane tyme, forder travellis may be tane for bringing of the ffeid and querrell betuix us to ane more happie and finall conclusioun: AND with this appointment of freindis, bothe we pairteis restit weale satisfeit and content. THAIRFOIR we besaik 3our Lo. to geve command to pe Justice, Justice clerk, and pair deputies, to continew pe dyet foirsaid, appointit for our compeirance befor thame, to vnderly the Law for pe Slauchter, vnto pe said terme of Witfunday nixtocum; and that pai dispenfe with our personall compeirance, and tak new cautioun for us, conforme to pe ordour: And to discharge thame of all proceeding aganis us in the mean tyme, and of thair offices in that pairt, quhill pe said terme of Witfunday: Whairanent thir presentis fall be pair Warrant. And 3our Lordschippis anfuert. [*Followis the Lordis delyuerance.*] APUD EDⁿ, *quarto Decembris*, 1621, *ffiat ut petitur*, to the xix day of Junij nixtocum: Becaus the *Erle of Mar*, being personallie present, testifeit pe consent and appointment within writtin.

AL. CANCELL^s.

For obedience of the quhilk Warrant, the Justice continewis this dyet in the same forme, force, and effect, with all tryell of the pannell for the Slauchter aboue writtin, to the said xix day of Junij, &c.—Sir George Elphinstoun of Blythefwoid, kny^t, became fouertie for the entrie of the said Laird of Calderwoid, &c.

(Jun. 19, 1622.)—THE Laird of Calderwoid producet his Maiesteis Letter following:

¹ Complains. ² It is likely the following words are omitted in the record, through a clerical error: 'Kny^t, James Maxwell,' sone, &c. ³ Disinterested. ⁴ When no proceeding takes place in suits before the Court of Session for *year and day*, the process is technically said to *fall asleep*, and is revived by a Summons of *Wakening*, &c.

JAMES R.

TRUSTIE and weilbelouit, We greit 5ow weill. WHAIR AS, We be credible informet that *Sir James Maxwell of Calderwood, kny^t*, and *Alexander Lindsay of Dunrod*, with thear complices, ar summond, to vnderly our Lawis, for pe Slauchter of vmq^{le} *Alexander Lecky of that Ilk*, alleadged committed be thame, We ar well pleased to grant vnto the said *Sir James* a Respitt for the same, during the space of certane monethis eftir the dait heirof: AND thairfoir haif thought goode, by these presentis, to will and requyre 5ow not to medle in any wyse, nor to tak cognitioun of the said cause, till the fyft day of October nixt. Wherein We expect 5owr conformitie to our pleafour. GEVIN at our Court of Grenewiche, the first of Junij, 1622.

THE Justice continewis, &c. Sir Johnne Hammiltoun of Lettrik, and James Maxwell of Kirkconnell, cautioneris, &c.

PRELOCUTOURIS in defence, Joseph Myller, Aduocat; Archibald Hammiltoun, Commiffar of Lanark.

(Oct. 5, 1622.)—JOSEPH MYLLER producet tua feuerall Testimoniallis, the ane subscryuit be the Minister of Lanark, and dyuerse elderis of the Sessiou of that Kirk; and the vther subscryvet be the Minister of Carlouk, and certane of the elderis of that Kirk, testifeing the deceise of Sir James Maxwell of Calderwood, kny^t: And vpone the production thairof askit instrumentis.

The Laird of Dunrod presentit to the Justice ane LETTER of HIS MAIESTEIS, quhairof the tennour followis.

To o^r trustie and weilbelouit, o^r Justice, Justice clerk, and pair deputeis whatsoeuer.

JAMES R.

Trustie and wellbelouit, We greete 5ow well. Whairas, We haue bene pleased to write to o^r Counsell, willing thame to employ their best meanes, for reconciliatioun of *Sir James Maxwell of Calderwood* and *Alexander Lekkie of that Ilk*: We haif lykwayis thocht by these presentis to will and requyre 5ow nocht to proceid in the criminall actioun intendit aganis the said *Sir James Maxwell* and his complices, for the Slauchter of vmq^{le} *Alexander Lekkie of that Ilk*, till 5e fall vnderstand by o^r said Counsell that pai haif gevin vp all forder deilling in that matter. So, expecting 5o^r conformitie to this o^r ples^t, we bid 5ou fare weill. GEVIN at Windefore, the feavinthe day of August, 1622.

Conforme to the quhilk directioun of his Maiestie, the Justice deferris all proceeding aganis the pannell.

The said Johnne Lyndsay disaffentis to the said continuatioun, and affirms him self to be innocent of the said Slauchter; and thairfoir offeris him self presentlie to the tryell of the Law for the samyn.—The Justice Ordanis him, with the remanent defenderis vpone pannell, to find caution. James Lyndsay of Scheillis, and Alexander Levingstoun of Belstane, become cautioneris, &c.

[*Mr Robert Fairlie, Justice-Depute.*]

Taking captive King's free lieges—Cruel oppression—Murder, &c.

Feb. 7, 1621.—JAMES PARK in Cathkyn, and George Park in Wester Gremlar, his brother.

Dilaitit of airt and pairt of the Taking of vmq^{le} William Knox, in Cathkyn, furth of his duelling hous, vnder silence of nycht, and with cudgellis and rungis besting and dinging him in the breist, fydis, bak, and bellie; thairby breking

and bruseing his haill intrallis and nobill pairtis within him, setting thair feit betuix his leggis vpon his ball-cod,¹ and forceing thairby his stanes to loup vp in his liskis;² binding him thairefter with ane coird, or hair-tedder, to ane horse and ane sled,³ and cayreing him with thame as ane captiue and prissoner to the toun of Hammiltoun: Off the quhilkis hurttis and dedlie woundis, he deceiffit, in the moneth of Januar; the samyn being done to him in the moneth of October of befor, in the yeir of God I^m.V^c.lxxxxvj yeiris.

PERSEWARIS, Johnne Knox, as fone; Sir Williame Oliphant, kny^t.

PRELOCUTORIS in defence, Mr Tho^s Hoip, Mr Ja^s Hammiltoun, Mr Lueis Stewart, (Advocates.)

It is allegit be the pannell, that the Dittay contenis tua feuerall crymes; the first, for taking and apprehending of his Maiesteis frie lege but⁴ Commissioun, quhilk is tressonable; the vther cryme, for Murthour and Slauchter of him, in in maner lybellit. As to the first cryme, quhilk inferris the cryme of Tressone, *non relevat*, becaus, taking without imprissoning in *privato carcere*, and detening him thairin, *per spacium viginti quatuor horarum*, can nocht, be⁵ the law, infer *penam privati carceris*. And as to the Murthour lybellit, *non relevat* to pas to ane Assyse, except it war condiscendit, at quhat tyme he contractit the deidlie seiknes, eftir the geving of the straikis quhairupoun daith followit, as is alleggit in the lybell. My lord Aduocat conioynes the tua crymes lybellit, and concludes thairin only *penam capitis* to be inflictit vpon the committeris; and thairfoir defyres the Justice to put the haill lybell *coniunctim* to the knowlege of ane Assyse.—The persewar, Johnne Knox, declairis that he will nocht persew at this tyme, becaus the speciall persones that ar summoned, and best knawis the treuth of the pannellis giltines, ar nocht present: And thairfoir, defyres that the matter may continew to ane fyftene dayis wairning, and the pannell put vnder new cautioun.—The pannell disassentis to the said continuatioun; and in respect, thair is ane sufficient number of Assyse present, all summoned be the persewar, offeris thame selffis to the tryell of the law for the haill crymes lybellit; quhairof thay declair thame selffis to be altogidder innocent: And protestis, in respect of thair former offer, that thay be nawayis trubillit or persewit for the saidis allegit crymes, in ony tyme cuming.

THE Justice continewis this matter to ane fyftene dayis wairning; and ordanis the pannell to find cautioun, &c. Williame Anderfone, portioner of Littil Govane, became cautioner, &c.

[*Mr Alexander Coluile, Justice-Depute.*]

Usurping King's authority—Taking captive &c.

Feb. 9.—RICHARD GRAHAME of Hospitalscheillis, and Robert Merfar, messinger in Abirdene.⁶

¹ Testes.

² Reins.

³ Sledge, or cart without wheels.

⁴ Without.

⁵ By.

⁶ Cautioners, 'George Erle of Marfchell, and James Garioche of Kinfair.'

Dilaitit for cuming to Patrik Farquhar, burges of Abirdene, his duelling-hous thair, and maist violentlie, but ordour of Law,¹ or concurrence of the Magistratis of the said burgh, and without ony Commissioun or vther Warrant, putting violent handis in the persone of the said Patrik Farquhar, taking him furth of his said hous; and thairfra, cayreing him, as ane captiue and prissoner, to the said Richerd Grahames Hous of Overcraig: As also, for cayreing him to the priffone of Stanehyve, quhairin he was keipit be the space of tuentie dayis: LYK AS, he was keipit and detenit in the said Richerd Grahames Hous, *tanquam in privato carcere*, be the space of tuentie foure houris; vsurpeing thairby our souerane lordis authoritie vpone thame: AND sic lyk, for transpoirting him to the duelling hous of Mr Williame Reid in Cowie, quhairin he was keipit in strait firmance the space of vther xxiiij houris: Vsurpeing thairby our souerane lordis authoritie vpone thame.

PRELOCUTOURIS in defence, Mr James Oliphant, Mr Roger Mowat, Aduocattis.

The said Patrik Farquhar declairit, that the saidis Letteris war altogidder raifit but² his warrant, and by³ his knowlege; and without ony informatioun gevin be him to our souerane lordis Aduocat, or to the said James Keyth,⁴ or ony vther thairintill: And thairfoir, he renuncet all actioun Criminal or Ciuile that he had or could allege aganis the said Richard and Robert, and past *simpliciter* fra thair persute, as altogidder frie and innocent thairrof.—My lord Aduocat declairis, that thair is collusion and secreit aggrement betuix Patrik Farquhar and the persones on pannell; and desyres the pannell thairfoir to be put vnder new caution, for thair compeirance of new agane, vpone xv dayis wairning, for his Maiesteis intereis allanerlie.—Johnne Grahame, indueller in Edinburgh, becomes cautioner to the above effect.

My lord Justice Ordanit na letteris to be direct furth aganis the pannell, at the instance of the said Patrik, for the crymes foirsaidis, in ony tyme cuming, in respect of his former declaratioun.

Slaughter.

Feb. 23.—JOHNNE BELLENDEN, indueller in Edinburghe.

Dilaitit of airt and pairt of the Slauchter of viiq^{le} James Dalmahoy, burges of Edinburgh.

PERSEWARIS.

Agnes and Helene Dalmahoy, sifteris; Sir Johnne Dalmahoy of that Ilk, kyn^t; Andro Ker of Jair.

PRELOCUTOURIS in defence, James Borthuik of Newbyres, Mr Laurence M^cGill.

THE JUSTICE, of consent of pairtie, continewis the dyet to the sevint of Marche

¹ Without legal warrant. ² Without. ³ Beside; past; without; contrary to. ⁴ Of Harviestoun, cautioner for producing the Letters duly executed against the pannell.

nixtocum. And ordanis the pannell to be tane bak to waird, thair to remane quhill the said day.

Mar. 7.—CONTINEWIS this matter to Fryday nixt, the nynt *instantis*.

Mar. 9.—THE perfewaris passis fra the perfute of the pannell, *pro loco et tempore*.

Slaughter.

Mar. 30.—MR JAMES BAILZIE, sone to Mathow Bailzie of Littilgill.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} James Dalmahoy, merchand burges of Edinburgh.

PRELOCUTOURIS in defence, Mathow Bailzie of Littilgill, Mr James Hammiltoun.

The saidis Mathow, and Mr James, declairit, that Mr James Bailzie, his sone, the tyme of the geving of the charge to him, for his compeirance, was and is as yit hevielie diseasit with feiknes, that he is nocht able to travell to the keiping of this dyet, &c.

Johnne Loverance, Minister at Robertoun being solemplie fuorne, declairit, that he is Minister at the Kirk of Robertoun, and within this thre dayis visseit Mr James Bailzie within the parochin, quhair he was lying bedfast, heavilie diseaset with feiknes, and nawayis of habilitie to travell, vpone horse or fute, to the keiping of this dyet; as he fould ansuer to the grit and Almychtie God. —*Johnne Dunfyre* in Robertoun, also fuorne, is conforme to the said Johnne Loverance, Minister.—*Mungo Inglis* thair, lykwayis deiply fuorne, depones conforme to the Minister.

THE Justice ordanit caution of new agane to be ffund for the said Mr James Bailzie, that he fall compeir the thrid day of the nixt Justice-air of Lanerk, or soner, vpone xv dayis. The said Mathow becomes cautioner.

[*Mr Robert Fairlie, Justice-Depute.*]

Murder under trust, credit, and assurance.

Apr. 13.—GEORGE ERLE OF CAITHNESS, and James Sinclair in Diran.

Dilaitit of airt and pairt of the crewall and treffonabill Murthour and Slaughter vnder trust, credit, and assureance of vmq^{le} Thomas Lyndsay in Scraibster in Kaithnes; committit be thame and thair compliceis, in forme and maner specifeit in the Letteris.

Robert Monro of Aldie, Commissar of Kaithnes, as brother on the mother fyde, to the said vmq^{le} Thomas, producit the Letteris deulie execute and indorfate vpone the said Erle and James Sinclair, be the quhilkis, thay and ather of thame ar denuncet rebellis and put to the horne, for nocht finding of caution, to haif compeirit befor the Justice or his deputis this day.

THE Justice, vpone the production of the saidis Letteris deulie execute,

indorlat, and regiftrat, adjudget the faid Erle and James Sinclair, in refpect thairrof, and of thair nocht compeirance perfonallie this day, to be ffugitiues fra his Maiefteis lawis for the faid treffonabill Murthour, as culpable and fugitiue thairfoir.

[*Mr Alexander Colville, Juſtice-Depute.*]

‘ Forcing’—Rape.

Jun. 27.—JAMES M^cNACHT in Igiſaird, and Thomas Weir in Gairding-holme-fute.

Dilaitit of the fforceing of vmq^{le} Jonet M^crone, fervand for the tyme to Thomas Weir in Gairdingholme-fute, and abuſeing hir, in the moneth of November, 1620 yeiris, in ſic foirt, that within tuentie dayis thaireftir ſcho deceiffit.

PERSEWAR, Williame Campbell, couſing-germane to the defunct.

PRELOCUTOURIS in defence, Mr Lueis Stewart, and Adame Cuninghame, (Advocates.)

The pannell defyres to vnderſtand the perſewaris entreis to perſew; and that he declair how neir of kyn he is to Jonet M^crone.—The perſewar declairis he is couſing-germane to the faid vmq^{le} Jonet, viz. ſcho was his father-ſiſter dochter; and thairfoir hes guid intreis to perſew.—It is allegit be the pannell, that he can nocht be eſtimat ane lauchfull perſewar, becaus the perſewaris father was the defunctis baſtard-brother; and ſa, of the Law, can nocht perſew, his father being baſtard; the verritie quhairof referris to the perſewaris ayth: Quba declairit the allegiance to be of verritie.

THE JUSTICE, in refpect thair was na lauchfull perſewar to inſiſt in this perſute, Ordanis the dyet to deſert.

The pannell takis inſtrumentis thairupoun, and affirms that thai ar altogidder innocent of the crymes lybellit; and gif ane lauchfull perſewar, ather for the parteis or the Kingis entreis, war preſent, thay wald maiſt willinglie offer thame ſelffis to the tryell of the law for the ſaidis crymes; and diſaſſentit, *ſimpliciter*, fra ony continuatioun, without ony exceptioun to be proponit aganis ony lauchfull perſewar or perſones of Aſſyſe, being honeſt and vnuſuſpect perſones; proteſting, in the meane tyme, for thair cautioneris relief, fund for thair compeirance this day.

Slaughter.

Jul. 19.—HENRIE BAIRD, at the Mylne of Mukard.

Dilaitit of the crewall Slaughter of vmq^{le} Robert Huttone, duelland within the parochin of Mukard, beſyde Caſtell Campbell, be caſting of ane otter-ſtalff, with ane tua-granet fork of irne at the end thairrof, at the faid vmq^{le} Robert, quhilk peirſit him in the bellie, quhairof he immediatlie thaireftir deceiffit; committit vpone the nynt of July inſtant, vpone ſet purpois, prouiſioun, and floir-thocht ſfellonie.

PERSEWAR, Johnne Huttone, at the Kirk of Mukard, as brother to the defunct.

The pannell confessis the fact, and craves God mercie.

VERDICT. The Assyse, all in ane voce, ffind the said Henrie Baird, conforme to his awin Judiciall Confessioun, to be ffylet, culpable, and convict of airt and pairt of the said Slauchter.—SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair his heid to be strukin fra his body; and all his moveable guidis to be escheit, &c.

Convocation of Lieges—Wearing of Hagbuts—Slaughter, &c.

Jul. 20.—WILLIAME DOUGLAS of Drumlangrig; James Douglas of Moussell, his brother; Johnne Douglas of Killievarrene, his brother naturall; Robert Greir, younger of Lag; and others.¹

Dilaitit for contravening his Maiesteis Actis of Parliament, in making of convocation of his hienes legis: AND beiring and weiring of hagbutis and pistolettis: AND for airt and pairt of the Slauchter of vniq^{le} Thomas Coupland in Cafchogill: AND demembring of Robert Douglas, sone to Sir Robert Douglas of Cafchogill, kny^t, of his left lug:² Committit in Maij lastwas, vpone the tuelf day thair of, at the Moss of Cafchogill.

PERSEWARIS, Margaret Corbie, the relict; Williame, Robert, and Thomas Couplandis, as sones; and Coupland, as dochter to the said vniq^{le} Thomas; Sir Robert Douglas of Cafchogill, kny^t, as father to Robert Douglas, and maister to vniq^{le} Thomas.

PRELOCUTORIS, Mr Thomas Hoip; Mr Thomas Nicolfone, younger; and James Dowie, wryter.

Convocation of Lieges—Wearing of Hagbuts—Slaughter, &c.

Jul. 20.—SIR ROBERT DOUGLAS of Cafchogill, kny^t; Robert Douglas, his sone; Johnne Paterfone, in Cafchogill; Thomas Paterfone, thair; Williame Coupland, thair; Hob Coupland, thair; Mathow Cowane, thair; and twenty-seven others.

Dilaitit for contravening of the Actis of Parliament, in making of convocation of his Maiesteis legis; beiring and weiring of hagbutis and pistolettis; and invading of the Laird of Drumlangrig, his brother, and remanent persewaris, with sehottis of hagbutis and pistolettis; committit at the Moss of Knockconnie, pertening to David Douglas, heritour thair of, vpone the tuelf day of Maij last.

¹ The rest of the pannels' were, 'Duncane Hunter of Ballagan; James Johnnstoun of Lochhous; James Johnnstoun, callit *Braikinsyde*, James Johnnstoun, callit *Croftheid*, James Douglas, and Robert Grahame, all four servandis to the said James of Lochelous; Archibald Douglas, servand to the Laird of Moussell; Robert Creichtoun, sone to . . . Creichtoun of Craufurdtonn; Thomas Bell, sone to *Reidcloke*; James Douglas, callit *in Glenmeid*; Christie Airmestran in Bigholme, his sone in law; Andro Hunter in Auchinbaithe; James Douglas, Thomas Mairtene, Johnne Paterfone, callit *the fukler*, all servandis to the said Laird of Drumlangrig; Hob Hunter in Crarieknow; and Johnne Rig, messinger.' ² Ear.

PERSEWARIS, Williame Douglas of Drumlangrig; James Douglas of Mouffell, his brother; Johnne Douglas of Killievarrane; James Johnnstoun of Lochelous; Robert Dalzell, sone naturall to Sir Robert Dalzell of Eliok, kny^t; Sir Williame Oliphant of Newtoun, kny^t.

Ane WARRANT was producet to my lord Justice, quhair of the tennour followis.

JUSTICE, Justice Clerk, and your deputis; forsamkill as the tuentie day of July instant is set and affixed for perfute of *Williame Douglas of Drumlangrig*, and certane his speciall freindis and kynsmen befor 50w, for pe slauchter of vmq^{le} *Thomas Coupland*, with hagbuttis and pistolettis; as also, for perfute of *Sir Robert Douglas of Cafchogill*, and certane his freindis and pairt-takeris, for making of convocatioun of his Maiesteis legis, and beiring, weiring, and schuiting of hagbutis and pistolettis, contrair his Maiesteis Actis of Parliament; as the Letteris, *hinc inde*, raifit be ather pairtie thairintill, beiris: AND becaus, be the mediatioun of freindis, the saidis actiones ar liklie to pak up and agrie, and that no forder truble be had amangis pame pairintill: It is pairfoir our will and plefour, that 5e continew the saidis dyettis to the thrid day of pe nixt Justice-air of the Scherefdome quhair pe saidis pairteis duellis, or soner, vpone fyftene dayis wairning; dispenfand with thair nocht compeirance befor 50w this day, and takand new cautoun for pe haill perfonas re-entrie contenit in the Letteris, to that effect, vnder the panes contenit in the Actis of Parliament. Quhairanent thir presentis fall be to 50w ane sufficient Warrant. Subferyuit at Edinburgh, the xx day of July, 1621.

HAMILTOUN. AL. CANCELL^s. MAR. MELROS.

THE Justice continewis the saidis tua dyettis to the thrid day of the nixt Justice-air of the Scherefdome of Dumfreis, quhairin the haill perfonas duellis, or soner, vpone fyftene dayis.

Compeirit personallie . . . Douglas of Caveris, Scheriff of Teviedaill, and become fouertie for the said Williame Douglas of Drumlangrig: And siclyk, Johnne Wilfone of Croglene, James Menzies of Enoche, and Malcolm Dalrum-pill of Enoche, fouerteis, conjunctlie and feuerallie, for Sir Robert Dalzell of Eliok, James Douglas of Mouffell, &c., that thay fall compeir, &c.—And on the vther pairt, compeirit Sir Williame Douglas, younger of Cafchogill, kny^t, and become plege and fouertie for his father, and haill remanent defenderis, &c.

[*Mr Robert Fairlie, Justice-Depute.*]

Slaughter—Wearing of Hagbuts and Pistolets, &c.

Aug. 24.—CAPITANE JAMES JOHNNSTOUN of Thornik.

Dilaitit of the felloun and crewall Slauchter of vmq^{le} Williame Johnnstoun, brother germane to Robert Johnnstoun of Wamfray: And for contravening of the Actis of Parliament, in beiring, weiring, and schuiting of hagbutis and pistolettis, and slaying the said vmq^{le} Williame Johnnstoun thairwith; and remanent crymes contenit in the criminall Letteris.

THE Justice ordanit James Johnnstoun of Braikanfyde, cautioner for the said Capitane, to be vnlawit and amerciati, for nocht entrie of the said Capitane, in the pane of ffyve hundreth merkis: And siclyk, that the said Capitane James, for his nocht compeirance, fall be denuncet rebell, and put to the horne; and all his moveabill guidis to be escheit, &c.

[*Mr Alexander Colvile, Justice-Depute.*]

Slaughter in Single Combat, or Duel, while in Foreign Service.

[THE following Trial is one which possesses considerable interest and importance, as well from the light which it throws on the application of the LAWS OF DUELLING, in Scotland and in the Low Countries, as from the rank and situation of the parties implicated. *Captain Harry Bruce*, who had subsequently been employed to superintend the martial exercises of CHARLES, PRINCE OF WALES, afterwards the unfortunate KING CHARLES I, was rigorously pursued, by the vindictive and mercenary spirit of the relatives of *Captain John Hamilton*, in the Supreme Criminal Tribunal of Scotland, after he had long before been honourably acquitted by Court Martial in Flanders—under the impression, no doubt, that they would either extort a large sum of money from this new Court favourite, or procure his ruin or death. The DUEL or SINGLE COMBAT referred to in this case, and into which *Bruce* had been dragged by the rashness and insolence of his antagonist, had taken place no less than about *seventeen years* previous to those proceedings!

The reader may here be referred to the Case of “*Capitan Johnne Rig, Archeour of the Gaird of France,*” in a former part of this Collection, Vol. II., p. 382.]

NOV. 14.—CAPITANE HARIE BRUCE, seruitour to THE PRINCE his Hienes.

Dilaitit of airt and pairt of the Slaughter of vmq^{le} Capitane Johnne Hammiltoun; committit in ane Singular Combat, in the Law Countreyis of fflanderis, in anno I^m.Vj^c. and fyve yeiris.

PERSEWARIS, Margaret Hammiltoun, as sifter; Sir Williame Oliphant of Newtoun, kny^t.

PRELOCUTOUR in defence, Mr Robert Foullis.

The pannell producet ane WARRANT and command of the Lordis of Secreit Counfall, quhair of the tennour followis.

ACT OF THE LORDS OF PRIVY COUNCIL.

AT EDINBUR^t, the threttene day of November, the 5eir of God I^m. sex hundreth tuentie ane 5eiris. ANENT the Supplication presentit to the Lordis of Secreit Counfall be *Capitane Harie Bruce*, seruitour to THE PRINCE HIS HIENES, makand mentioun, that quhair, the xiiij day of November instant is appointit vnto him, vpon the complent of *Margaret Hammiltoun*, as sifter, with the remanent kyn and freindis of vmq^{le} *Capitane Johnne Hammiltoun*, ffor his compeirance befor the Justice or his deputis, in the Tolbuthe of Ed^t, to vnderly the law for the Slauchter of þe said vmq^{le} *Capitane Johnne Hammiltoun*, committit be the said *Capitane Harie*, in ane Singular Combat, in the Law Countreyis of fflanderis, some sevintene 5eiris ago; lyk as, the Justice intendis to proceed aganis him, in that matter, althoght it be of verritie, that gif respect be had to the nature and qualitie of the perfute, and to the circumstances of the Slauchter, quhan, quhair, and vpon quhat occasioun it fell out, it will be fund that the tryell thair of can no way be propper nor competent befor the said Justice, nor in no vther Judicatorie within this Kingdome; becaus the said Slauchter was committit outwith his Maiesteis dominiones, within the territoireis of the *Esfaitis of the Law Countreyis*, in ane Singular Combat, quhairvnto the said *Capitan Harie* was vrgeid and drawin by the grittest respectis of credeit and reputation quhair-with a Gentilman could be affail3eid: AND howeuir the said *Capitane Johnne Hammiltoun* and he be borne Scottisemen, and in that respect obleist in all submissiue deuteis of allegiance to thair naturall Soverane, 3it the tyme of that vnhappy slauchter, and dyuerse 5eiris befor, thay war bothe in actuall seruice, and fuorne *Officeris* to the saidis *Esfaitis*, and alse far subiect to thame and to thair Judgement and Jurisdiction, in all matteris, alswell impoirting lyfe and death, as guidis and geir, as gif thay had

bene thair naturall-borne subiectis : And thair was no difference betuix thame and the natiues of the cuntry, in pointis of subiectioun to the saidis *Esfaitis* and pair lawis, the saidis *Esfaitis*, at that tyme, being pair fouerane Judges in all matteris, of quhatfumeur qualitie, occurring within thair boundis. AND twitching the matter it selff, the treuth is, as was clerlie verifeit befor the *Counsell of Weiris*¹ establischid be the saidis *Esfaitis*, for trying and censuring of matteris of this kynd, that the said *Capitane Harie* was dyuerse tymes challenget to the Combat be the said vmq^{le} *Capitane Johnne Hammiltoun*, nochtwithstanding of the mony offeris maid be the said *Capitane Harie* to geve him all dew satisfacioun and resson, in the matter contravertit betuix thame, that, in respectiue termes of consideratioun, could be craved ; bot the moir the said *Capitane Harie* eschewit his Challenge, he was so much the moir earnest in following of the fame, objecting vnto the said *Capitane Harie* the reproche of cowardice, and protesting to abuse him, in his private revenge, accoirdinglie : And so, the said *Capitane Harie*, finding him selff interest and tuchid in so heigh a poynt of credeit and reputatioun, quhilk being anes lost, was nevir to be recoverit, bot wald cary with him to the grave ane infamous imputatioun, and an ignominious spott of vnworthie cowardice ; and haifing respect, pairwithall, to his birth and parentage, quhilk he was lothe to blemishe, in a matter of this kynd ; and aboue all thingis, haiving eir befor his eis the equitie of his caus, with ane full and constant assuurance, that God, who is pe trew fercheour of the heart, and vpon quhois devyne Providence the event of such duellis dependis, wald iustifie his pairt, in that uniuersall Challenge quhilk was revertit vpon him, he acceptit and vndertuik the Challenge, quhairin it plesit God to iustifie and cleir the equitie of his caus, by making the said vmq^{le} *Capitane Johnne* to vnderly the dew desert of his errour and raschenes : Quhairvpon, the said *Capitane Harie*, being callit befor the said *Counsell of Weir*, and the forme and circumstances of pe samyn being narowlie examined and ryped vp be thame, the qualitie of the said *Capitane Harie* and pe said vmq^{le} *Capitane Johnne*, thair persones being sborne and actuall Officeris in the airmie, making thame subiect vnto the said *Counsell of Weir*, and punisheable be the lawis of that *Esfait* ; thay stand, that pe said *Capitane Harie* had done nothing vnbeseeameing the deutie of a fouldiour, suppointit with the testimonie of a good conscience : And pairfoir, restoirit him to his place and charge, quhairin he serued with good credeit dyuerse zeiris pairrestir. AND quhair as, he looked that this forme of tryell, vsit aganis him be the said *Counsell of Weir*, who wer only Judges to him in this caice, shuld haif secrete and warranted him frome ony new persute, zit the suster and freindis² of the said vmq^{le} *Capitane Johnne* callit him, for pe same Slauchter, befor his Maiesteis Justice, in the sax hundreth and fyve zeir of God ;³ quhair of informatioun being send vnto him frome hence, he maid his addres to HIS MAIESTIE, acquaintit his hienes with the perticuleris of this matter, and all that proceedit pairin ; quho, eftir consideratioun pair of, nocht only vtterit his discontentment that ony such matteris shuld haif bene walknit heir, bot HIS MAIESTIE was graciousslie plesit to grant vnto the said *Capitane Harie* his Remission for that deid, and wait a Letter vnto the *Lordis* of his Maiesteis *Previe Counsell* for discharging the Justice to meddle in that matter : Quhilk Remission and Letter being delyuerit to the lair *Erle of Dumbair*, and presentit vnto the saidis *Lordis*, as some of thame rememberis ; the sleuth and negligence of those who war trusted with the said *Capitane Harie* his effairs, sufferit his Letteris to perrishe ; and the matter has eir restit and sleipit sensyne till now. AND quhairas this matter is alreddie tryed and censured by those whome it properlie concerned, humbly thairfoir desyreing the saidis *Lordis* that thay wald geve command to the Justice, Justice clerk, and thair deputtis to desert the said dyet, and to desist and ceis fra all proceeding thairintill ; lykas, at mair lenth is contenit in the said Supplication. Quhilk being red, hard, and considerit be the saidis *Lordis*, and thay being pairwith weill advyset, THE LORDIS OF SECREIT COUNSALL findis it verrie necessar and expedient, that pai vnderstand HIS MAIESTEIS Will and plesour in this matter, asfor thay gif ony finall sentence or

¹ Council of war ; court-martial.² Blood-relations.³ Anno 1605 ; a mode of expression by no means infrequent in pleadings, &c., for the sake of brevity.

direction thairanent : And thairfoir the saidis Lordis Ordanis and commandis his Maieftieis Justice, Justice clerk, and thair deputis, to continew the said dyet to the tuintie nynt day of Marche nixtocum, and to defist and ceis fra all forder proceeding pairin, quhill the said day ; takand new caution of this supplicant, for his compeirance to his tryell the said day, conforme to the ordour obseruet in fuche caices ; to the effect that in this meane tyme the saidis Lordis may haif convenient tyme and lasure to informe HIS MAIESTIE anent the estait of this matter ; and to attend HIS MAIESTEIS gracious Will and pleasour pairanent. For quhilk purpois the saidis Lordis Ordanis ane Missiue Letter to be writtin to his Maieftie.

EXTRACTUM de Libris Actorum secreti Consilij, s. d. n. Regis, per me Jacobum Prymrois, clericum ejusdem, sub meis signo et subscriptione manualibus. JACOBUS PRYMROIS.

Accoirding to the quhilk ACT, and for obedience of the ordinance mentionet thairintill, the Justice continewis this dyet, with all tryell to be tane for the said cryme, to the said tuintie nynt day of Marche nixtocum.—Mr James Bruce, indueller in Edinburghe, becomes cautionner for his entry, &c.

(Mar. 29, 1622.)—COMPEIRIT Mr James Bruce, indueller in Edinburghe, as he that was caution for the said *Capitane Harie* his entrie, and producet

ACT OF SECREIT COUNSALL.

APUD HALYRUIDHOUS, xxij die mensis Martij, anno dom. 1^m. Vj^c. xxij^o. THE Lordis of Secreit Counfall, accoirding to ane Warrant and direction in writ, signed be THE KINGIS MA^{TIE}, and this day presented vnto thame, Ordanis and Commandis the Justice, Justice clerk, and pair deputis to Defert be dyet appointit to *Capitane Harie Bruce* for his compeirance befor thame, to vnderly the law for pe Slauchter of vmq^{le} *Johne Hamiltoun*, and to defist and ceise frome all proceeding aganis him at this dyet. Quhairanent the Extract of pir presentis fall be vnto thame a Warrant. EXTRACTUM, &c.

JACOBUS PRYMROIS.

Followis also the tennour of HIS MAIESTEIS Letter and direction to the Lordis of Secreit Counsell, anent the premisses.

JAMES R.

RICHT trustie and weilbelouit cousingis and counsalouris, and richt trustie and belouit counsalouris, We greit 5ow weil. We war pleased to wryte to 5ow about tuelf 5eiris ago, concerning *Capitane Harie Bruce*, willing that no legall proceeding sould be permitted to be vsed aganis him for pe Slauchter of vmq^{le} *Joⁿ Hamiltoun*, in respect that pe samyn was committed out of oure dominiones ; AND now, being crediblie informed, that of late some haif gone about to reueive pat perfute, nochtwithstanding of our former commandement, We haif thoght guid, by theis presentis, to will and requyre 5ow to discharge o^r Justice generall, Justice clerk, and pair deputis, and all vperis o^r Judges and officeris quhatfumeuir, to grant ony Summondis or proces against pe said *Capitane Harie* for pe foirsaid Slauchter, or in ony wayis presume to medle or call him in questioun for pe samyn. And thus, most earnestlie recommending to 5ow speciall cair, We bid 5ow fairweill. GEVIN at o^r manno^r of Theobaldis, the xiiij of Marche, 1622.

Accoirding to the quhilk Act of Counfall and ordinance thairin contenit, the Justice DESERTIT THE DYET aboue writtin.

APPENDIX TO THE TRIAL OF CAPTAIN HARIE BRUCE.

[SEVERAL Cases have already occurred in the course of this Collection, illustrative of the state of the Law and practice, in Scotland, as to DUELLING, interchanging of CARTELS, and Slaughters committed in SINGLE COMBAT. The preceding Trial is one of much interest ; and the subject led the Editor to make some enquiries into various affairs of

honour, which had happened about the same period of this King's reign. Among others which have hitherto been noticed in this work, none appear to have excited greater interest than the quarrel between the sons of LORD CRANSTOUN and of SIR GEDEON MURRAY, which had nearly terminated in the most fatal manner. Although unconnected with the Case of *Captain Harie Bruce*, the following documents throw much light upon the opinions and practices of the Nobility and gentry in feuds and affairs of honour. It has been thought proper to preserve them in this place, as a memorial of transactions which tend to give a complexion and character to the spirit and genius of those times.]

I. LETTER from the Privy Council of Scotland to King James VI., relative to the CHALLENGE, &c. between the sons of LORD CRANSTOUN and of SIR GEDEON MURRAY.¹

PLEAS YOUR MOST EXCELLENT AND SACRED MATIE,

As WE hope that your highnes bathe long since vnderstood of sum CHALLENGE OF COMBAT betuix the secound sone of THE LORD CRANSTOUN and SIR GEDEON MURRAY his sone, begun betuix the yowthes, vpon licht cawffis of verie small moment; and of the ordour taken be ws for preventing thame meiting, and calling of thame to there ansuer; and of the cowrfe taken for there reconcilioun, whiche wes done in prefens of the hole COUNSALL, wheirby all probabilitie of forder Challenging betuix the pairteis then, in appeirans, wes removed; so when, vpon privie information maid to ws, sum fear was apprehendit of a new breache betuix the pairteis, by interchangeing of CARTELLIS privilye betuix thame selfis, whowever we wald have bene forye that the folyeis of the childrene, or the hard event which follow fuche accidentis, fuld have empaiired or diminifched the love and affectioun which heirtofoir haith bene and doeth still continew betuix there parentis, (bothe of quhome haithe worthelie deserved, and have behaved thame selfis most dewtifullye and faythfullye as thay have bene employed in your Maties fervis,) yit heirin we war so muche more justlie moved to adverte to fuche a noveltye, that efter a reconciliatioun once maid befor your Maties COUNSELL, ather the keiping of your highnes peace fuld be so lytle regairdit, or the ordour takin by ws for the observeing therof so far contemned, as that any durst presume or attempt any new querrelling. Wheirvpon both the fatheris wer charged to compeir, and bring with thame and exhibite there sones; whiche being accordinglie and dewtifullye obeyit by bothe of thame, efter a verye hard and exact tryall² takin, in regaird of the vnwillingnes of either³ of the yowthes, vpon thair first questioneing, to confes what new maiter haid passid betuix thame; at last, it being found that THE LORD CRANSTOUNIS sone wes the Challenger, by a CARTELL, wrettin efter the reconciliatioun maid; we therwpon committed him cloise prisoner in the *Casle of Blaknes*. The other, whowever, being provoked, yit, in regaird he did obscure and conceale it, (being some presumptioun that he intendit to keip the meiting, and so to mak a breache of your Maties peace,) wes adiudget to be committed in *Edr Casell*, in frie waarde, haveing laid fredome granted vnto him furth thair of within xlvij houris, and confyned within this Burgh and a myle abowt the same; where as, the said *Lord Cranstounis sone*, thir fourtene dayes past, haveing lyin cloise prisoner in *Blaknes*, and in the mean whyle making suite often by Bill⁴ to be releived, confessing, in most humble maner, his offence, and offering all satisfacioun that fuld be injoynd be ws, wes, by directioun, brocht from the place of his imprisonment by the *Liettenant of your MATIES GAIRD*, and presented befor ws; where, in the presence of *Sir Gedeon Murray* and his sone, he did humblye, vpon his knies, craive pardoun of your MATIE for the offence done, and did intreat ws to be suitters for the same to your sacred highnes, on his behalf; haveing heirwithe confessed, also, the great wrong he haid done vnto your Maties COUNSELL, in preswming to renew ony Challenge efter reconciliatiounes maid; and theirwith vttering most apparent signes of inward forrow for offending of his so loveing father, vnto whome he knew this his bypast behaviour wes so distastefull, as without ony intercessioun he culd expect at his handes no favour. He then to the partie challanged, in pre-

¹ *Dennyne MSS.*, Advocates' Library, A. 2, 40.
or 'Supplication' to the Lords of Privy Council.

² Enquiry; examination.

³ Both.

⁴ A Bill,

fence of bothe fathers, did there confes the wrong he haid done him, offering him what satisfaccioun he wald demand; and did there protest, that howevir, in his yowthfull folye, he haid aferyved the last reconciliacioun as a maiter extorted by constraint or command of THE COUNSELL, that yit nottheles this his present aggriment wes of meire affectioun, whiche he intendit all bypast eylist¹ abolished to continew heirefter.

There wes sum jealousye in this mater takin by SIR GEDEON, as that the LORD CRANSTOUN, whowevir not a direct vrger of his sone to this *Challenge*, haid nottheles intendit to tak some advantage, to the preiudice of the credite and honour of him and his sone; and by the speiches delyvered by SIR GEDEON in our preiudice, we did conceive no lefs: Bot yit, that this impressioun, not being cleirit, might tak no deiper roote, we then did questioun THE LORD CRANSTOUN theirow; who, in presence of SIR GEDEON, by his great oathe, vnrequyred, did protest that he wes so far from countenauncing or allowing of his sones actioun and cariage in this busynes, as on the contrarye, these sevin yeiris past, no incident whatsoever that haid interveyned haid so muche greivit him; and that he did assure him self that SIR GEDEON wes no les in conscience perswadit, since he haid foirwarned him, immediatlie vpon his knowledge of the first Challenge; and vpon his sones depairtour the last tyme from him, suspecting the humour of the yowthe, and yit, vpon his conscience, nocht knowing of any thing intendit, did of new certifie SIR GEDEON of his fearis. Whiche declaratioun, being delivered with so great attestations by one not muche accustomed to sweiring, did not onely remove all scrupule and jealousye frome SIR GEDEON, as he then affirmed, but left none of the beholderis vnsatisfyed, and fullie perswadit of that Noble-mannis innocencye. THE COUNSELL, havinge taken ane verye striet and exact tryall of all circumstanceis whiche might inferre any the least suspitioun of THE LORD CRANSTOUNIS allowance, airte, pairte, or connivence at his sonis actioun, in the examining wherof, the farder that we did drywe we still fand the father the more cleare of all imputatioun; and, in our judgement, SIR GEDEON is fullye perswadit theirow; lykas, in our presence he did profess no lefs. And howevir, that heirvpon all pairteis, bothe eldar and younger, wer reconceiled, yit, becaws of the offence done to your MATIE by JAMES CRANSTOUN, in pressing to renew any querrell, efter aggriment ones maid in presence of COUNSELL, we have theirvpoun adiudget the said *James Cranstoun*, that betuix and the first of October nixt, he fall depairt your MATIES dominiones, and remaine furthe of the same, and naway retorne bak, vntill that your MATIES speciall Licence and Warrant be purchest; and have takin sovertye and cawtioun, bound vnder a great fowme, for that effect. AND becaws there wilbe a necessitie of provisoun to be maid by the father for the sones furneising, in his going beyond See, therefore we have committed him prisoner in his father's owin keiping, vntill the tyme of his depairture; who is to restraine, endureing that space, his sone of all sliche libertye, wheirbye any furder harme might be feared.

AND albeit the reconciliacioun and aggriment wes fullye maid, so as in our judgementis there did not remayne the least scrupule of any furder grudge amanges the pairteis, yit the noveltye of the caice, and the hairme whiche the impunitye thairof might produce, if vpon this example, others who haif bene formerlye reconceilit, wald now preise to renew and revieue there olde querrellis, we culd nocht, in our dewtye to your MATIE, suffer this to go vnpunished; whiche moved ws, (however earnestlie and humblye entreated by SIR GEDEON MURRAY to recall our Sentence and determinatioun aganis the said *James Cranstoun*,) nottheles, for ane exemplarye punishment, and efferying² of others to commit³ the lyk insolence, to continew our resolutioun takin in the maiter for his BANISCHEING, as said is. As lykwayis, ather of the two fathers bund and obleist, not onely for these there sones, betuix whome this CHALLENGE hes past, bot for all others of there sones come to mannis aige, everie ane of thaim vnder the payne of Ten Thowfsand merkis, that thay fall keip your MATIES peace, that no CARTELLIS falbe sent by the one to the other; and that the pairtye vnto whome any falbe sent, fall

¹ Offence; from *oculus* and *ledere*. Danish, *overlast*, molestia, incommodum.

² Affraying; terrifying. Fr. *effrayant*.

³ A strange form of speech, then in use, to express 'from committing.'

immediatlie, with all possible diligence, acquent the Counsell with the CHALLENGE sent to him ; otherwayes the payne foirlaid to be incurrit. And hoipeing that nothing heirin is left vndone, whichè in sic a caise wes requisite, and fullye expecting your MA^{TIES} good allowance and favorable construcc-tioun of our proceidingis, wischeing thay may prove good mettall when thay come to the tryall of the trew tuitchestone, vnto whome we do most humblye pray for the continuance of all happines, We doe rest

Your sacred Maiesteis most humble and obedyant subiectis and seruitouris,

AL. CANCELL^S. DUMBAR. WIGTOUN. KILSAYTH. J. PRESTOUN. ALEX^R HAY. S. T. HAMILTON.
EDINBURGH, the tent of August, 1610.

TO THE KING, his most sacred and axcellent MAIESTIE, &c.

II. LETTER, *the Privy Council to the King*.¹

MOST GRATIOUS AND SACRED SOUERANE,

We ressaunt your MAIESTEIS Letter, twitcheing your MA^{ties} censure² of that lait committit ryott be THE ERLL OF LOTHEANE, and anent the fyne whilk your MAIESTIE wold haif to be imposed vpon him for that caus ; whairin, as your MAIESTEIS most excellent and rair wisdome in the censuring of that mater so iuditiously, by the circomestanceis sett down in your MAIESTEIS Lettre, and the directioun gevin be your MAIESTIE anent the pvnishching thairof, is verye weele warrandit with infallible groundis of iustice and reasoun ; yitt, becaus siche heich fynes in ryottis of this qualitey hathe not bene vsuall to be imposed vpoun ony personis heir, we wilbe bauld to intreate your MAIESTEIS fauour, for a mitigatioun of the fyne to Thrie Thoufand merkis, whiche in all oure opinionis is answerable³ to the qualitey of the offence committed. He is full prissoner, and fall so continew whill the pairtye in some measour ressaue satisfaccioun. And howeur this ouersight, by⁴ all oure expectationis, hes fallen oute in his persone, we hoip that this your MAIESTEIS censure of him, will mak him moir consideratlie and respectiuelie to looke to his future cariage and behaviour.

AND whereas your MAIESTIE doeth mervell that no tryale hes bene tane be ws of the infolencie committit be THE LORD OF CRANSTONIS sones aganis THE ERLE OF LOTHEANE, it will pleis your MAIESTIE we did nevir heir of ony complaint in that mater, the pairtye being silent, and no informatioun gevin be him thairin : Alwayes,⁵ we haif causit demand of him, yf he will persew ? He hes promiseit to gif informatioun to your MAIESTEIS Aduocat, and to furneis probatioun ; whairin we shall tak siche exact tryall, and accordingleie inflict such pvnishment as the coursè of iustice, in siche a caise, requireth. And so, praying God to blisse your Maieftie with all contentment and happynes, we rest for ever,

Your Maiesteis most humble and obedyent subiectis and seruitouris,

AL. CANCELL^S. ARGYLE. MONTROSE. GLENCAIRNE. BALFOUR. GLASGOW.

EDINBURGH, xv May, 1611.

TO THE KING, his most sacred and excellent MAIESTIE.

‘ Forcing’—‘ Defloiring’—Rape.

Dec. 5.—ANDRO WISCHERT of Mwretoun.

Dilaitit of the schamefull fforceing and defloiring of Bessie Leslie, dochter naturall to George Leslie of Auldcreig, aganis hir will, scho being ane young virgane nocht past ellevin yeiris of age ; committit in maner and at the tyme specifeit in the Letteris.

PERSEWARIS, Bessie Leslie, George Leslie of Auldcreig.

PRELOCUTOURIS in defence, Mr Laurence Mc Gill, Mr Roger Mowat.

¹ *Denmylne MSS.* Adv. Library.
to ; against.

² Judgment.
⁵ Nevertheless ; at all events.

³ Commensurate ; corresponding to.

⁴ Contrary

The pannell offeris him felff to the tryell of the Law for the cryme contenit in the Letteris; quhairof, as he allegit, he is innocent; and disassentis fra all maner of continuatioun: And proteftis, in respect of his compeirance this day and place, to vnderly the law, and that thair is nocht ane sufficient number of Assyse present, that na Letteris be direct aganis him in tyme cuming; speciallie, in respect this perfute is malicioullie intendit aganis him, being ane man of thre scoir ten yeiris of age, at the instance of the said George Leslie of Auldcreig, quha compeiris nocht this day to assist this perfute.

THE Justice ordanit the Assysouris, lauchfullie summoned and nocht compeirand, to be vnlawit.— Levingstoun of Donypace become caution for the said Andro his entrie, vpone xv dayis wairning, &c.

[CURIA JUSTICIARIE, *f. d. n. Regis, tenta in pretorio de Edinburgh, xx Marcij 1622, per Magistrum Alexandrum Coluile de Blair, Jusiciarium; necnon per Dominum Walterum Stewart de Mynto, ballivum Regalitatis de Glesgow, virtute cujusdam deliberationis Dominorum Secreti Consilij.*]

ASSESSOURS TO THE JUSTICE, appointit be the Lordis of Secreit Counfall:

James Archebischope of Glesgow,¹ Sir George Erskyne of Innerteill,² Mr Joⁿ Weymes of Craightoun.³

Witchcraft—Sorcery—Charming—Incantation—Soothsaying —Abusing the People.

Mar. 20, 1622.—MARGARET WALLACE, spous of Johnne Dynning, mercheand burges of Glesgow.

Dilaitit, accused, and persewit of the feuerall articles and poyntis of Dittay following. DITTAY *against the pannel*,⁴ *Margaret Wallace.*

FORSAMEKILL AS, albeit be the devyne law of Almychtie God, set down in his sacred woird, speciallie in pe 20 chap. of *Leviticus*, and 18 chap. of *Deuteronomie*, aganis pe vsuaris and practizaris of WITCHCRAFT, SORCERIE, CHARMEING, and SOTHESAYING, and against the SEIKERIS *of help and resposnsis of thame*, thraitning and denunceing to be committeris of sic devillisch practizes the pwneischment of daith. As also, be dyuerse Actis of Parliament, and Municipall lawis of this Kingdome, alsweill publeift and set furth be his Maiestie, in his awin tyme, as in the dayis of his maist noble progenitouris; namelie, be pe 73 Act of the Parliament, haldin be his hienes darrest moþer, Quene Marie, of

¹ James Law, formerly Bishop of Orkney. In the year 1615, he succeeded Archbishop Spottiswood, the well-known author of the Church History published in his name; and died in November, 1632.

² Lord Innerteil, one of the Ordinary Lords of Session.

³ An Ordinary Lord of Session.

⁴ This Dittay contains only the four Articles or points of which the Assise convicted this victim of superstition. The nature of the remaining points are clearly defined in the very interesting pleadings, which the Editor has carefully preserved at length, in consequence of their marking, in a striking manner, the prevailing opinions held by the most eminent Scottish lawyers, on the subject of Witchcraft, &c. The subject is so extraordinary, that it was thought advisable to print the pleas and arguments without curtailment.

worthie memorie, it is expresse provydit, statute, and ordanit, that na maner of persone or persones, of quhatfumeur estait, degrie, or conditioun thay be of, presume, nor tak vpone hand to vse any maner of *Witchcraft*, *Sorcerie*, or *Negromancie*, nor gif thame selfis furth to haif any sic craft or knowlege, thair-by abuisseing his hienes people and subiectis; and that na persone seik any help, respons, or consultatioun at any sic vsfearis or abusfearis foirsaidis, vnder the pane of death, alswell to be execute vpone the vsfear and abusfear, as to the seiker of the respons or consultatioun; as in the saidis Lawis and Actis of Parliament at mair lenth is contenit. NOCHTWITHSTANDING quhairof, it is of veritie, that the said *Margaret Wallace*, schaiking of all feir of God, reuerence or regaird to our souerane lordis autoritie and lawis, haifing consauet ane deidlie haitrent and evill will aganis *Cuthbert Greg*, couper, burges of Glesgow, becaus of certane speiches vtterit be him aganis hir and vinq^{le} *Cristiane Grahame*, ane notorious Witche, and laitlie execute for Sorcerie and Witchcraft, at Witsonday a thre 3eir syne, or pairby, the said *Margaret Wallace*, furth of þe malice of hir heart, promiseit and avowit that schoould mak the said *Cuthbert*, within few dayis pair-estir, nocht of habilitie to work or wyn to him self ane caik of breid; accoirding to the quhilk devillische promise and damnable vow, the said *Cuthbert* schortlie thaireftir, be the said *Margaret* hir devillische Inchantment, Sorcerie, and Witchcraft practizet be hir vpone him, he was visseit and grevoullie trubillit with ane strange vnnaturall and vnknowin disseis, maist crewallie and lamentabillie tormentit with continuall sueiting, be the space of fyftene dayis togidder, and pairby wes brocht to sic infirmitie and waiknes, nane expecting his lyfe, that he was nocht hable to steir or move himself: And the said *Margaret*, as ane Witche and Sorcerar, being suspectit as the onlayer and causer of the said grevous and heavie disseis, was sent for by certane of þe said *Cuthbertis* freindis, and requeisit to cum and vizeit him; and eftir mony malicious refusallis maid be hir, in end scho come to him; at quhais cuming, scho, to manifest hir skill for his help, tuik him be þe schaikill-bane¹ with the ane hand, and laid hir vther hand vpone his breist, and without ony word-speiking, saif only be moveing of hir lipis, past fra him at that instant; and vpone þe morne paireftir, returning bak agane to the said *Cuthbert*, scho tuik him be þe airme and bad him aryse, quha at that tyme, and fyftene dayis befor, was nocht abill to lift his legis without help; 3it scho, haifing vrget him to ryse, and taking him be the hand, as said is, brocht him out of his bed, and paireftir led him but² the hous; quha, immediatlie paireftir, be hir Sorcerie and Charmeing practizet be hir, walkit vp and down þe fluir, without help or suppoirt of ony; and fra that tyme quiklie recoverit and convalescit of þe former

¹ Wrist.² To another apartment. In small houses, consisting merely of a 'but' and a 'ben,' the 'but' is the outermost room or kitchen; the 'ben' is a better sort of apartment, where, upon great occasions, company is received. The master and mistress usually sleep in the 'ben' or inner room.

grevous diseais : Quhairin þe said *Margaret* hes committit manifest Sorcerie and Witchcraft, in laying on and taking af seikneffis, be hir devillische meanis, vset and practizet be hir vpone the said *Cuthbert*, in maner foirsaid. AND siclyk, about foure 5eir syne, or þairby, the said *Margaret Wallace*, being within þe duelling hous of *Alexander Vallange*, mercheand burges of Glesgow, and haifing fallin in ane grit and suddane seiknes within þe said hous, scho incontinent þair-efter, as ane consulter and seiker of help and resþouffis of Witches and Sorceraris, instrumentis of the Devill þair maister, send for vinq^{le} *Cristiane Grahame*, ane notorious Witche, and quha is laitlie convict and brunt for hir devillerie and Witchcraft, practizet aganis dyuerse his Maiesteis guid subiectis, in Glesgow and þairaboutis ; quhilk vinq^{le} *Cristiane Grahame*, haifing cum to the said *Margaret* to þe said Hous, scho tuik þe said *Margaret* furth þairof to hir awin buith,¹ quhair, be the said *Cristiane* hir devillische charmes practizet vpone the said *Margaret*, the said *Margaret* was curet of hir former suddane seiknes. And þe said *Cristiane Grahame*, with the said *Margaret Wallace*, cuming togidder bak agane to the said hous, and at þe turnepok-fute þairof, meitting with *Margaret Vallange*, dochter to the said *Alexander*, thay, at þe leifst ane or vther of thame, laid þe said crewall seiknes, be þair Sorcerie and Witchcraft, vpone the said *Margaret Vallange*, ane 5oung infant bairne, quha immediatlie þaireftir, in grit suddantie, fell down to þe grund, the haill power of hir body being tane away frome hir ; and with pitiefull sereiches, schoutis, and cryis, lying in that horrible payne, nocht hable to arryse, was tane vp be *Margaret Montgomerie* hir moþer, spous to þe said *Alexander*, and brocht in be hir in hir airmes to þe hous, and þair remanit with continuall schouteing and crying, nocht being of habilitie to move or gang be þe space of xxiiij houris þaireftir, quhill² þe said *Margaret Wallace*, vnſent for, come in to vizeit hir ; lyk as, þe said *Margaret*, as sone as scho huikit vpone þe said bairne, declairit that it was the suddane tranſe or diseais that scho had tane the day befoir, and þairfoir willit and deſyret the bairnes mother to send for *Cristiane Grahame* to cure and releif hir þairof : And the said *Margaret Montgomerie* haifing absolutelie refuifit ſa to do, ſaying to hir, ‘ scho wad commit hir bairne to God, and nocht mell³ with the Devill or ony of his instrumentis,’ the said *Margaret Wallace* maiſt blaſphemouſlie and devillifchlie anſuerit agane, that þe said ‘ *Cristiane Grahame* could do als mekill, in that eirand, in cureing of that diseais, as gif God him ſelfſ wald cum out of Hevin and cure hir—and albeit þe deid-ſtraik⁴ war laid on, scho could tak it af agane—and without hir help þair could be na remeid to the bairne !’ Lyk as, ſchortlie þaireftir, without the motheris knowlege, the said *Cristiane Grahame* was brocht in be þe said *Margaret Wallace* to þe said bairne ; at

¹ Her husband's booth, or shop.² Until.³ Fr. *mêler*.⁴ Literally, death-blow.

quhais cuming, the said *Margaret* listit vp þe bairnes heid, and the said *Cristiane* tuik hir be þe schaikill-bane,¹ and brocht þe bairne furth of hir bed, quhair scho was lying bedfast in grit payne of befoir; and þairefter, setting hir down vpon ane stuile, with some croces and signes maid vpon hir, and be vttering of dyuerse woirdis, (nocht knawin quhat thay war,) restoirit hir to hir helth. Quhairin, the said *Margaret Wallace* hes planelie declairit hir selff to be ane oppin and manifest consulter with the said *Cristiane Grahame*, ane notorious Witch, and ane seiker of help and respossiis of hir, in her devillisch airt; alsweill for cureing of her selff, as in practizeing with her, be Sorcerie and Witchcraft, to þe cure and help of þe said *Alexander Vallange* bairne, in maner and forme aboue writtin: And þe said *Margaret Wallace* is airt and pairt of þe devillisch practizes abouewrittin, practizet be the said *Cristiane Grahame*, at the time and in maner foirsaid. To the taikin,² the said *Cristiane Grahame*, the day of hir accusatioun and persute, being þe xxvj day of October last, 1621, willinglie, of hir awin accoord, in Judgement, befoir hir convictioun, the Assyse being incloset, affirmet, and with oppin speache declairit, that þe said *Margaret Wallace* was airt and pairt with hir in all hir wiket deidis; and ressauit fra hir sum cullourit filk and worfet, for practizeing of Witchcraft against sic persones to quhome þe said *Margaret* buir invy; and quhan willinglie scho wald nocht geve þe said *Margaret* sic materiallis, the said *Margaret*, as scho saw thame in þe said *Cristianes* handis, wald violentlie reif þame from hir: Lyk as, vpon the morne þaireftir, scho being at þe staik befoir hir executioun, ratifeit and renewit the haill premisses to be of verritie.

ITEM, a tua 5eir syne, or þairby, *Margaret Mure*, dochter to vmq^{le} *Archibald Mure*, burges of Glesgow, being hevelie diseasit with ane strange and vncouth seiknes, and nocht liklie to haif recoverit þairof, the said *Margaret Wallace*, geving out hir selff to haif skill in þe cure of the said seiknes, scho come to the duelling-hous of *David Scheirar*, couper, burges of Glesgow, and þair finding *Marioun Mure*, his spous, faper-sister to the said *Margaret Mure*, lamenting and weiping for the said *Margaretis* seiknes, the said vmq^{le} *Cristiane Grahame*, be þe said *Margaret Wallace* hir devyse and direction, a littill þaireftir, come to þe said hous; and þe said *Margaret Wallace*, being acquentit with þe caus of þe said *Mariones* greif, desyret þe said *Cristiane Grahame* to help þe bairne; quhais ansuer was to the said *Margaret Wallace*, that the said *Margaret Wallace* and scho behovet to go first to the place aggreit vpon betuix thame, quhillk place was knawin to þe said *Margaret* hir selff: Accoording to the quhillk appointment, the said *Margaret Wallace*, with the said *Cristiane Grahame*, past, that same nycht, betuix ellevin and tuelf houris, vnder silence and clud of nycht, to the 3aird of *James Fynlay*, burges of Glesgow, quhair thay remanet the space

¹ Wrist.² In token, testimony, or proof whereof.

of ane hour togidder, practizeing Sorcerie and Witchcraft, for cuiring of þe said bairne, and taking the said seiknes af hir, be vnlauchfull meanis; lyk as, þat samyn nycht, the said seiknes wes tane af þe said bairne, and scho conualeffit pairof. To the taikin, the said *Margaret Wallace*, in hir going to þe 3aird þat nycht, tynt hir pantoun;¹ lyk as, þe said *Marioun Mure*, for þe foirfaid cuir, gaif to þe said *Margaret Wallace* and *Cristiane Grahame* ane guise,² with ane pynt of wyne, within aucht dayis þaireftir. ITEM, a tua 3eir fyne, or pairby, ane discoird haifing fallin out betuix *Alexander Boig*, smyth in Gorballis, and þe said *Margaret Wallace* and *Johnne Dynning*, hir husband, about the bying of ane irne studie³ to *Williame Weymes*, mercheand burges of Glesgow, ane complant was maid vpone him be þe said *Margaret* to *Sir George Elphinstoun of Blitheswoid, kny^t*, his maister; and becaus scho ressaute na amendis at þe said *Sir George* handis, becaus he tryit⁴ hir complent to be vniust, and only maid vpone malice, the said *Margaret*, maist impudentlie, in presens of þe said *Sir George* and his *Lady, James Pollok*, and *George Thomesone*, his tennentis, oppinlie thraitnet and avowet to do to þe said *Alexander Boig* ane evill turne: ffor effectuating quhairrof, scho, be hir Devillerie, Sorcerie, and Witchcraft, prepairit and practizet be hir, laid ane crewall and feirfull seiknes vpone *Boig*, the said *Alexanderis* bairne, of foure 3eir auld, within few dayis þaireftir; quhilk bairne, with continuall sueiting and vomeiting, deceifit within tua dayis thaireftir. AND last, þe said *Margaret Wallace* is, and hes bene thir aucht or nyne 3eiris bygane, ane cownoun consulter with Witches, speciallie with the said *Cristiane Grahame, Katharene Blair*, and vther Witches and Sorceraris, and ane seiker of help and responsis of thame, alswell for hir awin cure and releif of dyuerse seikneses and diseassis quhairwith scho hes bene vissit, as for þe cure and help of hir freindis and aquentance in pair seikneses and diseassis; as also, for þe overthrow and distructioun of dyuerse persones, men, women, and bairnes, be Sorcerie, Witchcraft, Charmeing, and Incantatioun, and vperis devilisch and vnlauchfull meanis, expresselie prohibeit and forbidden be the Lawis of Almychtie God, and Municipall Lawis of this kingdome; thairby abuseing the people, and puting thame in grit dreddour⁵ and feir of hir and of hir devyllisch practizes, vsit and practizet be hir aganis sic of our souerane lordis peceable subiectes to quhome scho hes borne ony grudge, or vtterit ony malicious thaitningis. BE the committing of þe quhilkis perticular practizes aboue writtin, as also be the hanting, vseing, and frequenting of þe unhappie socieatie and companie of þe said Witches and Sorceraris, instrumentis of the Devill, fault and gevin over to him for committing of all maner of mischeif, and in assisting and

¹ Slipper. Fr. *pantoufle*.⁴ Ascertained upon examination.² Goose.⁵ Dread; terror.³ Purchasing of a smith's stithy, or anvil.

taking pairt with thame in þe practize of all foirt of Witchcraft and Sorcerie, and in the feiking of help and responffis of thame, baith for cureing of vnnaturall and vnknawin feikneffes, and for þe malicious inflicting and laying on of dyuerse feirfull and horrible feikneffes and difeaffis vpone dyuerse perfones, for pair overthrow and distructioun, in maner foirfaid, the faid *Margaret Wallace* hes contravenit the tennour of þe faidis Lawis and Actis of Parliament, and incurrit the panes and pwneifchment of daith fet down pairintill; quhilk aucht and fould be execute vpone hir, with all rigour, to þe terrour and example of vtheris heireftir.

PERSEWARIS, Sir Williame Oliphant of Newtoun, kny^t; Alexander Boig, fmyth in Gorbellis; Johne Robertoun, querriour, burges of Glesgow, for thame selffis, and as informeris to his Maiefteis Aduocat of the haille pointis of Dittay.

PRELOCUTOURIS in defence, Johne Dynning, mercheand in (Glesgow); Mr Alexander Peiblis, Mr Robert Lermonth, Mr Thomas Nicolfone, younger, (Advocates.)

COMPEIRIT Sir Walter Stewart of Mynto, kny^t, and producet ane delyuerance of the Lordis of Secreit Counfell; quhairof the tennour followis.

SUPPLICATION of *Ludouik, Duik of Lennox.*

MY LORDIS OF SECREIT COUNSALL, vnto your Ll. humlie meanis and fchawis I your feruitour, LODOUIK DUIK OF LENNOX, lord and heritabill Bailzie of the Regalitie of Glesgow, and Sir Walter Stewart of Mynto, kny^t, my depute of þe faid Bailserie: That quhair, þe tuentie day of Marche instant is appointit to Margaret Wallace to compeir befor the Justice, in the Tolbuith of Edr, to vnderly the law for sum poyntis of Witchcraft laid to hir charge: And quhair as, fcho duellis within þe boundis of my Regalitie, and fua is fubiect to me, my office and Jurisdictione, 3it I will nocht contest in that poynt, nor stand out aganis þe courfe tane be your Ll. for hir tryell; bot for the preferuatioun of þe liberteis and privileges of my office and Jurisdiction, my humble defyre and Petitione vnto your Lo. is, that my faid depute may be admittit to fit with his Maiefteis Justice in the tryell of the faid Margaret, and to judge pairin with him accoirdinglie—and your Lo. anfuer.

[*Followis the Lordis delyuerance, vpone the bak of the foirfaid Supplication.*]

APUD ED^r, *ix Marcij, 1^m. Vj^c.xxij.* FIAT ut petitur. AL. CANCELL^r. MAR. MELROIS.

Vpone the production of the quhilk delyuerance, the faid Sir Walter askit instrumentis.

THE JUSTICE Ordanit the faid *Sir Walter* to sitt down with him, with the remanent Affessouris.

THE Dittay being red, and the *ffirst Article* thair of, concerning hir laying on of ane grevous feiknes vpone Cuthbert Greg, couper, burges of Glesgow, be Sorcerie and Witchcraft, and aff-taking of the faid feiknes be the lyk devillifche and vnlauchfull meanes; as the ffirst Article beiris; quhilk the pannell haillilie denyit.—It is thaireftir allegit be Mr Alexander Peiblis, as prelocutour for the pannell, that the Dittay and ffirst Article thair of can nawayis be put to the knowlege of ane Affyse; becaus it is nocht lybellit, nor fet down in the Dittay, that the fact lybellit was done be the pannell, or the feiknes inflictit be hir. Nixt, it is nocht lybellit *quibus mediis, quibus modis, et quibus malis artibus*, the samyn was accomplifchet; becaus Witchcraft can nocht be accomplifchet as

Witchcraft, bot¹ be characteris, signes, croces, poysonet watteris, poysonet asches, poysonet oyles, powderis, figures, pictouris, poysonet herbis, ruittis, vennemous oyles, woirdis, speiches, by incalling and invocatioun of the name of Sathan, quha, at the accomplieishment quhairof, hes promiseit to geve his presens to thame; without the quhilkis, or ony of thame, Witchcraft can nocht be accomplieft: Nather is it lybellit, that this fact and deid allegit is committit be the pannell, be ony of thir meanis: And sa, that Article can nocht pas to ane Assyse.—To the quhilk it is answert be my lord Aduocat, that the allegiance aucht to be repellit, in respect of the lybell and haill poyntis thairrof, tane *conjunctim*; be the quhilk it is affirmet *positivè*, that this seiknes was laid on be the pannell vpone *Cuthbert Greg*, be hir Sorcerie and Witchcraft; and he purget, and relevit, and restoirit to his helth be hir Sorcerie and Witchcraft: And sa, the Dittay, as relevant in that poynt, fould pas to ane Assyse.

It is forder allegit be the pannell and hir prelocutouris, that the woirdis ‘laying on and taking af’ ar altogidder generall, and can nocht pas to ane Assyse, nevir condiscending in speciall quhat was done; as is fet down in the former definitioun of Witchcraft.—To the quhilk it is answert be the persewaris, that thair is no necessitie to condiscend vpone the forme of the on-laying and af-taking of seiknesses, quhidder be woirdis, signes, croces, and vtherwayis, the persewaris nawayis being previe thairto, nather can thai be vrget to condiscend thairupoun, seing the Witches, practizeris of that vnlauchfull and godles meane, ar best acquentit with the poyntis of thair awin craft: And thairfoir, it being lybellit, relevantlie, that, be hir Sorcerie and Witchcraft, the seiknes was baith laid on and tane af be hir, the samyn fould pas to the knowlege of ane Assyse, as relevant.

It is forder allegit be Mr Thomas Nicolfone, as prelocutour for the pannell, that of the Law *multa indicia debilia nunquam faciunt indicium indubitatum, quia nunquam ea que natura sunt dubia possunt facere rem indubitatum; ut multa integra vnum sanum, multa non alba vnum album*. This is the opinioun of *Pharinacius*, and of *Delrio* in his 5 sect. pag. 728; at the leift, except that thair war ane coherence and necessar subordinatioun of *illa multa indicia*. Bot sa it is, in this poynt of dittay, thair is confuset severall articles, quhilkis, *per se*, ar *indicia debilia*; and thair is na coherence amangis thame selffis, in sa far as the promiseing to do him ane evill turne, and the subsequent seiknes, ar nawayis coherent, nather can the ane follow vpone the vther. *SECUNDO, circumstantie indictionum sine quibus ad inquisitionem non proceditur sunt quis, quando, ubi, cum quibus, quomodo circumstantia, quomodo est huic xui, et quibus instrumentis factum esse dicatur, et sint pulveres, vnguina determina mortuorum*. And quhair it appeiris to be allegit in the reply, that *de medijs non potest constare*, becaus

¹ Excepting; unless.

they are knawin only to the Witches and thair Maister, thair is heirin ane manifest equivocatioun, in fa far as be the determinatioun of the haill traiteris *de Veneficijs, hec duo sunt disperata signa media*; it is grantit *sine medijs*, condiscending vpone *medijs*, a lybell may stand relevant; becaus *hec SATANA stragemata quibus ille naturaliter vtatur medijs sunt plerumque incognita*; bot of all necessitie, to the lybelling of ane deid of Witchcraft, *accedere oportet superstitionem vt dicatur vrsupasse res aliquas facta vel verba que sapiant incantationem vel dicatur nominatim exercuisse actum aliquem qui ex communi maleficiorum praxi ad malificium dirigitur*. This is DELRIO's opinioun, ceitting the haill treiteis *de Veneficijs*, in his thrid sect. pag. 711; et libro 5, sect. 16, pag. 774. And the premisses, fa authorizet be the haill learnet wryteris, ar of infallible verritie; for this reasone, becaus thair can be na deid of Witchcraft lybellit relevantlie, bot man¹ be fa lybellit, as it is possible, *per rerum naturam*, to the Assyse to cognosce thairupoun; bot it is subsumet, that except sum sensible actioun or signe, or vther thing be lybellit, it is impossible to the Assyse to cognosce thairupoun, *quia nihil est in anima quod non sit prius in sensu*.

The persewaris repeittis thair former ansuer, foundit vpone the haill memberis of the Dittay, tane *coniunctim*; quhilkis memberis coheris verrie pertinentlie—a promise to inflict the seiknes, and laid on—the on-laying of the seiknes, be Inchantment, as the Dittay beiris—and the taking be the hand of the persone vizeit with the seiknes, and releifing him thairof be moveing of hir lips, &c.: And as for the tryell of the Assyse, the deidis ar verrie publict and knawin; and referris the verritie thairof to the Depositiones of the Witneses alreddie tane, and to be tane in that matter, and to the Assyse awin knowlege.—The pannell adheris to thair former exceptioun, vncondiscending in speciall, *quibus modis, quibus medijs, et quibus malis artibus* to infer Witchcraft.

The pannell quarrellis that pairt of the lybell be the quhilk it is said, that scho inflicted the seiknes be Witchcraft, nocht condiscending quhat maner of Witchcraft was vset for inflicting thairof. And quhair it is said, that the memberis coheris, becaus of a promise and the effect following, the pannell oppones the authority of *Pharinatius*, confirmet be *Delrio*, in the 718 page of his 3 sect.; quhair it is said, *immo mine² delictum subsecutum inimicia non sufficiunt ad penam sortilegij; quia huiusmodi indicia sunt tantum remota*. As lykwayis, a stronger authoritie, pag. 717; quhair it is affirmet, and bakit with resson,³ in thir termes, *mine subsecute damno—et si male fame sit minans indicium, sunt insertum ratio potest enim pars offensa alios habere inimicos qui hoc tegmine preter scelus perpetrarunt*: Nather is thair necessitie to affirme *alium fecisse*; becaus the possibilitie of ane instance aganis ane generall reule evinces the incertantie

¹ Must:² Threatening expressions.³ Backed, seconded by argument.

thairof: *Additur, quod in criminalibus nunquam ex presumptionibus proceditur ad condemnationem, sed probationes debent esse luce meridiana clariores.* And as to the vther pairt, concerning the af-taking of the feiknes, thair is na deid lybellit bot ordinarie deidis of vizeiting a patient, be a freind or a phisitioun, to wit, graipping of the pulses or chaikill-bane and breift, quhilk is the steiring of the spreittis-vitall, and is the ordiner behauour vset and practizet be the visitouris of ony patient; and becaus that eftir thais ordiner remedeis the patient arraise, and that scho maid him to ryfe, *est elenchus dilirij.* And forder, the pannellis former authorities man¹ be respectit, becaus thair is na contrair practeis producet.—My lord Aduocat repeatit his former anfuwer.

THE *Secund Article of Dittay* being red, and the said Margaret being accuset thairby, viz. that vpone a discord fallin out betuix hir and *Johne Robertoun*, querriour, a thre yeir syue, scho thraitnet and avowit to be avengit vpone his flescche; quhairvpone a diseis was inflictit be hir vpone him, quhairin he yit continewis, and that be hir Sorcerie and Witchcraft practizet be hir vpone him.—It is allegit be the pannell, aganis the said secund Article of Dittay, that the samyn is nawayis relevant anent *Johne Robertoun*; being altogidder coincident with the former Article, and cayreing thairwith far les probabilitie nor² the former; ffor thair is na member thairof relevant to infer Witchcraft, for sa mekill thairof as consistis in fact, tuiching *Robertoun* his inhabilitie to work this thre yeir bygane, throw the inhabilitie of his feiknes, quhilk is manifest fals in the self: ffor it is evident, be oculer inspectioun, to luik to him presentlie at the bar, that he hes sufficient strentth of body to work: As also, it fall be verifeit, gif neid beis, that he, being an querriour of his craft,³ hes wrocht, thir dyuerse yeiris bygane, to dyuerse persones, namelie, to *Sir George Elphinstoun of Blitheswoid*, *George Anderfone in Woidfyde*, and to the pannell, be wyuning of stanes furth of the querrell;⁴ and repeatit the former allegiance maid aganst the first Article. *Igitur, &c.*—To the quhilk it is anfuwerit be the persewaris, that the allegiance aucht to be repellit, in respect of the Dittay, quhilk is relevant in it self. And as to that point consistin *in facto*, the persewar referis the tryell thairof to the Witnesses producet and to be producet, and to the persones of Assyse, quha aucht to cognosce vpone the haill poyntis of Dittay, consistin *in facto*.

It is forder allegit be Mr Thomas Nicolfone, that the said secund poynt of Dittay is altogidder irrelevant; becaus of the Law, *indicium minarum et damni subsequenti*, quhilk is the only substance of this point, and is nawayis relevant of the Law, *quoties delictum ex intervallo dicitur subsequens*; bot sa it is, in this Dittay, it is lybellit, that the thraitning of *Johne Robertoun*, and the inflicting of the diseis, was within this yeir and this half, quhilk is *ex intervallo*; And

¹ Must.² Than.³ To his trade.⁴ Stone quarry.

quhair as, it appearis that this feiknes is inflicted immediatlie eftir ane vther thraitning maid to the wyfe of *Johanne Robertoun*, *nullo modo relevat*; becaus *ut mine et damnum subsecutum faciunt indicium, oportet ut sit eadem persona cui mine et damnum dicuntur inferri*; sa that the thraitning to the wyfe, and inflicting feiknes vpon hir husband, is na relevant poynt. *Item, mine et damnum subsecutum nullum omnino faciunt indicium, nisi mine fuerint specificate, seu de eodem quod subsecutum est in specie*; ffor ane general thraitning to do ane evill turne, nocht condiscending vpon the speciall evill turne, can haif na coherence with ane speciall skaith following thairaftir, to mak it *venefice*; becaus *mine et damnum subsecutum* ar comptit *aliquale indicium maxime respectu predictionis*, as ane maner of fute-saying; and that can be comptit na fute-saying quhilk ony man could lykwayis foirtell by¹ ane Witche, viz. *predicere de genere et subsecutum esse speciem*.—My lord Aduocat adheris to his former ansuer.

THE *Thrid Article of Dittay*, anent ane discord that fell out betuix the pannell and *Jonet Harper*, and of ane thraitning and vow maid to mak the said *Jonet Harper* in a worfe cais nor² hir poysonet fwyne; and anent ane feirfull feiknes quhairin scho schortlie thaireftir fell be the pannellis Sorcerie, Incantatioun, and Witchcraft—It is allegit be the pannell and his prelocoutouris, that the thrid Article is nawayis relevant, nevir condiscending quhat maner of Inchantment scho was bewitchet with, and be quhat factis and deidis this was done, and quhat was vsed be the pannell for that effect.—It is ansuerit be my lord Aduocut, that the allegeance aucht to be repellit, in respect of the Dittay.

THE *ffourth Article of Dittay*, anent the pannell hir being within *Alexander Vallange* hous, quhair scho fell in ane grit and suddane feiknes; and hir sending for vmq^{le} *Cristiane Grahame*, ane notorious Witche, and consulting with hir for hir relief of that feiknes; and eftir the said *Cristiane* hir cuning, of the pannellis passing out of the said *Alexander Vallange* hous to hir awin buith, with the said *Cristiane*, quhair scho was charmet and curet; and thaireftir the same feiknes, be devillerie and Witchcraft, cassin vpon *Alexander Vallange* bairne; and anent the said *Cristiane Grahame* hir cuning with the pannell to the bairne, and cureing hir, be taking af agane of the said feiknes; and for airt and pairt of the af-taking and on-laying of feiknes, and of af-taking the samyn agane af the said bairne with the said *Cristiane*; and consulting and practizeing of Witchcraft with hir for that effect, &c. The samyn being red, and the pannell indytit thairof—It is allegit be the pannell and hir prelocoutouris; aganis the said fourt Article, that the first pairt thairof is nawayis relevant, beiring that scho contractit ane suddane diseise, and for cureing thairof, send for *Cristiane Grahame*, ane notorious Witche, except it had bene expresse lybellit, that the tyme the

¹ Besides; *forbye*; independent of.² Than.

pannell fend for hir, scho was ane notorious Witche, of the pannellis knowlege, and that scho fend for hir as ane notorious Witche, *ad hunc effectum*, to cure hir of that diseis: And it is nocht lybellit nather, that quhan *Cristiane* come, the pannell consultit with hir as with ane Witche; ffor, it is supponit¹ that ane Notter² war hangit for ane ffals Instrument, and he had gevin the excipient ane Seifing tuentie yeiris afoir, is that Seifing, gevin sa lang befor, ffalfe? Na mair can that be ane poynt of Dittay, the pannellis sending for *Cristiane Grahame*, except scho was knawin to hir at that tyme to be ane Witche. The secund member is nawayis relevant, beiring that scho curet the pannell in the buithe, for that makis ane contradictionne, that scho was deidlie diseaset quhan scho come, and thaireftir raife and past to the buithe, and thair was curet. The thrid member is nawayis relevant, beiring that the pannellis feiknes was cassin on the bairne, being lybellit that the samyn was done be the pannell, or be *Cristiane Grahame*, or be ane or vther of ws (thame). The fourt member is nawayis relevant, becaus it is confessit in the Dittay, that the pannell was curet in the buithe; and thaireftir come out of the buithe to the hous, and cuist it on the bairne: Gif the pannell was curet in the buith, quhair was the feiknes? *Hoc est impossibile*. As to the rest of the poyntis of that Article, that scho come down to the hous, vsent for, quhair the bairne was; that can be na poynt of Witchcraft. That the pannell declairit it was the feiknes scho had, *non relevat*, except it had bene verifeit and tryit³ that hir self had bene bewitched. And as for that member thairof, desyreing to fend for *Cristiane Grahame* to help her, *non relevat* to infer Witchcraft, except scho had knawin the said *Cristiane* to be ane notorious Witche. As to the rest of that Article, quhilk the pannell alto-gidder denyis, vpon hir aith and conscience, quhan the judge demandis hir; and albeit it war grantit, yit it is na poynt of Witchcraft, bot rather Blasphemie, and blasphemous speiches, quhilk can nocht coheir with this lybell of Witchcraft; bot is content, quhan evir scho fall be tryit and fund guiltie, to vnderly the pwneischment of the lawis of the cuntrie. That poynt of the Dittay, that *Cristiane Grahame* come at the pannellis desyre and curet the bairne, is nocht relevant to infer the cryme of Witchcraft aganis the pannell, except the samyn had bene done at hir speciall command, *malis artibus et veneficis artibus*, for the hailling of hir. It is nocht lybellit that the samyn was done be the pannell, or at hir command, or be ony Sorcerie or Witchcraft vsed be hir for that effect: And as to *Cristiane Grahame*, quhat scho did, the pannell can nocht be pwneist thairfoir. And as to *Cristiane Grahames* pretendit Confessioun, quhilk is nocht producet, it can nocht be respectit, *quia est dicta socia dicti criminis*; nather is the samyn relevant, albeit it war trew, as it is nocht, ffor hir confessioun can nocht

¹ Supposed, or argued, for the sake of illustration. ² Notary public. ³ Proved; established legally.

work aganis Margaret Wallace, *quia dicit se esse sociam dicti criminis ; et dicente se sociam criminis non creditur, quia ex suo dicto est infamis et sic testimonium perhibere non potest ; precipué, quia malefici, venefici qui ad fortilegos divinosque concurrunt nullatenus ad testimonium sunt admittendi.* And quhair as it may appeir, that *in crimine venefici, vt in casu excepto, etiam infames admittuntur ; hoc verum non est nisi cum duplici cautela, vna quod confessio infamis sit jurata non enim ei creditur nisi testi, et non testi nisi jurato :* The secund cautell is, *non fidem facit dictum socij nisi confirmatum sit in tormentis.* Dammoderius, Tit. *de Reprobatione.*

The persewaris allegis, that the haill allegeances proponit aganis the ffourt Article aucht to be repellit, in respect of the Article and haill memberis thair of, tane *coniunctim* ; and quhair it is allegit that the Article is nocht relevant, except it war affirmet that *Margaret Wallace* knew *Cristiane Grahame* to be ane Witche, that pairt aucht to be repellit, in respect of the expres woirdis of the Dittay, beiring, ‘ that the said *Margaret Wallace* affirmet that *Cristiane Grahame* had als grit knowlege as God him selff, and as gif God him selff wald cum out of Hevin and cure hir ! Albeit the deid-straik war laid on, scho could tak it af agane !’ As to the argumentis proponit aganis that pairt of the Dittay foundit vpon the Depositiones of *Cristiane Grahame*, that pairt is verrie relevant, and the argument is only proponit aganis the probatioun ; to the quhilkis argumentis sufficient answers fall be maid the tyme of the verificatioun of that poynt of the Dittay ; at quhilk tyme, it fall be maid cleir, baith be Law and practique, that in matteris of Treffone and Witchcraft, and vtheris caices exceptit, wemen, *socij criminis*, and infame¹ persones ar admittit Witneffis.

The pannell, adheirand to hir former allegiance, affirms that that member of the Article of Dittay is nawayis relevant, becaus scho is summond to answere to ane lybell of Witchcraft, and that pairt of the lybell inferrit be the persewaris repeating thais odious and vnrechairfable speiches, as ane argument of the pannellis knowlege of *Grahame* to haif bene ane Witch, the samyn ar woirdis of Blasphemie : Quhilkis being plane Blasphemie, (nocht granting the speiking thair of,) scho is nocht haldin to answere to that pairt thair of, in this persute ; nather dois the lybell conclude ony thing aganis the pannell, to infer hir to haif knowlege that *Cristiane Grahame* was ane Witche, (vnder protestatioun, the pannell denyis thame altogidder to be of verritie, as of befor,) yit the samyn being bot woirdis, can nocht infer ane cryme of Witchcraft, it nocht being confessit be the pannell to be trew ; nather can it furneise a Dittay of Withcraft, quhairvpon scho may be accuset, nor repute nor estemit a Confessioun, nocht being maid judiciallie, bot allegit spokin be ane wyfe to ane vther, vpon certane

¹ Persons declared, or considered, infamous by law.

altercationes arryfeing amangis thame. *Igitur*, &c. And to the anſuer *de ſociis criminum*, thair is na anſuer maid ſpeciallie to that pairt, quhair it is ſaid, *non creditur ſocij teſtimonio, niſi confirmatur tormentis*. As to ony Confeſſioun maid be *Grahame* eftir hir convictioun, *nihil operatur, et non relevat* to put the pannell to ane Affyſe thairfoir.

THE *ffyft Article of Dittay* being red, anent the cureing be Sorcerie and Witchcraft of *Margaret Mure*, dochter to vmq^{le} *Archibald Mure*, of ane ſtrange and vnknewin diſeaſe, be taking af the ſaid ſeiknes af the ſaid bairne, be the help and aſſiſtance of *Criſtiane Grahame*, and conſulting with the ſaid *Criſtiane* thairanent, being a notorious Witche; the ſaid *Margaret Wallace*, with the ſaid *Criſtiane Grahame*, haifing paſt, vnder ſilence and clud of nycht, to the 3aird of *James Fyndlay*, burges of Glefſgow, quhair thay abaid togidder the ſpace of ane hour, practizeing Sorcerie and Witchcraft for cureing the ſaid bairne, and taking the ſaid ſeiknes af hir; as at lenth is ſet down in the ſaid ffyft Article: And the ſaid *Margaret* being accuſet thairof—It is allegit be the ſaid *Margaret* and hir prelocutouris, that the ſaid *ffyft Article* is nawayis relevant, nor na pairt thairof; nevir condeſcending in ſpeciall quhat ſcho did, quhat Sorcerie or Inchantment ſcho vſet or applyit, or quhat was practizet be hir for taking af the ſeiknes af the bairne; nor yit condeſcending vpone the meanis of Sorcerie or Witchcraft, quhidder be ſignes, woirdis, croces, incantatioun, invocatioun of the Devillis name; without the quhilkis, Witchcraft can nocht be accompliſhet.—It is anſuerit be the perſewaris, that the allegiance aucht to be repellit, in reſpect of the article of Dittay, beirand the ſeiknes to be tane af the bairne be the pannellis Sorcerie and Witchcraft, practizet be hir and *Criſtiane Grahame*, for the bairnes help, and cure thairof be vnlauchfull meanis.

THE *Saxt Article of Dittay* being red, and the ſaid *Margaret* accuſet thairof, viz. that ſcho, haifing conſauet ane deidlie haitrent aganis *Robert Mure*, mercheand burges of Glefſgow, thraitnet him with mony outrageous ſpeiches, ſaying to him, ‘Thow ſall gang hame to thy hous, and ſall bleid at thy noiſe ane quart of bluid, bot ſall nocht die quhill (*until*) thow ſend for me and ask me forgiveness;’ quhairvpone ſchortlie thaireftir, be the ſaid *Margaret* hir Sorcerie and Witchcraft practizet vpone him, he contractit ane grevous and ſuddane ſeiknes, quhairaf he deceiſſit; quhilk is confeſſit in prefens of Witneſſes—It is allegit be the pannell and hir prelocutouris, aganis the *saxt Article*, that the ſamyn is nocht relevant, for the particuler anſweris and argumentis maid to the haill Articles of befoir, quhilk the pannell repeittis, and everie ane of thame, as ane ſufficient allegiance, *brevitatis cauſa*, to ſtay the ſamyn to pas to ane Affyſe: And as to hir pretendit Confeſſioun, maid in prefens of Witneſſes, can nocht be reſpectit, becaus *eſt Confeſſio extra-judicialis que non tenet conſitentem niſi in iudicio fac-*

tam : And albeit it war grantit, as it is nocht, that scho maid ony sic Confessioun, scho may reseill¹ thairfra ; and sa is na relevant poynt to pas to ane Assyse ; quhilk is confirmet be the authoritie of SALICOTUS, L. finali, codice *de Probationibus* ; *probationem seu Confessionem sponte factam potest reus revocare, et confessus non est condemnandus nisi constet de corpore delicti, id est damnum datum esse malificium facinoris.* Libro 1 de Contraversiis, cap. 28. *Item*, we haif ane expres text, Lege prima, § Divus, ff. de Questionibus ; *Confessiones reorum pro exploratis facinoribus haberi non oportere, et Confessio extrajudicialis non sufficit ad qualificationem delicti.* JULIUS CLARUS, Lib. 5, § finali, quest. 55, num. 2. *Immo Confessio, facta coram Judice non sedente pro tribunali est tanquam facta privata et ex ea reus non potest condemnari.*

It is ansuerit be the persewaris, that the saxt Article is verrie relevant, being tane *coniunctim*, becaus it contenis ane promeis to do the deid, the doing of the deid, and the confessioun thaireftir of the doing thair of. And as to the Confessioun, that the samyn is maid extra-judicialle of ane cryne committit, that extra-judiciall Confessioun is lauchfull and valid to condampne the pairtie quha hes confessit. Dammoderius, cap. 54, num. vltimo.—It is duplyit be the pannell, that the samyn is contrair to the text, and Dammoderius speikis na thing of ane extra-judiciall Confessioun ; and repeatit thair perticuler ansuer maid to the particuler Articles of Dittay ofbefoir.—The persewar also repeatit the hail particular ansueris maid ofbefoir.

THE *Sevint Article of Dittay* being red, and the pannell accuset thairby, that a ffyve or sex yeir syne, scho being convenit befor the Sessioun of the Kirk of Glasgow, and accuset be *Mr Archibald Glen*, Minister at Carmunnok, ffor rayleing on the said vni^{le} *Robert Mure*, brother-in-law to the said *Mr Archibald*, and raleing on *Elspeth Arbuckle*, his mother, and for taking away of the said *Robert Mure*'s life be Sorcerie and Witchcraft ; and that the said *Margaret*, in revenge thair of, schortlie thaireftir, be hir Sorcerie and Witchcraft, laid ane feirfull and vnknawin feiknes vpon the said *Mr Archibald*, quhair of, he continuall sueitting, he deceiflit ; and sa, was airt and pairt of his daith ; quhilk scho hes confessit, senfyne, in presens of witnesses. It is allegit and ansuerit be the pannell, *et supra*, against the *sevint Article*, baith anent the fact and pretendit Confessioun lybellit, ffor thair is na thing qualifeit of Sorcerie, or Withcraft, or Inchantment, done to the said *Mr Archibald* : for the treuth is, that the man deceiflit of ane consumption of his lichtis ;² nather is it lybellit that scho inflictit ony thing vpon him be signes, croces, inchantit herbis, oyles, claithes, or ony vther meanis.—The persewaris ansueris, that the said allegiance aucht to be repellit, in respect of the sevint Article of Dittay, relevant in the self, and ansueris maid ofbefoir.

¹ Withdraw ; retract ; *resile*.² Lungs ; pulmonary consumption.

THE *Aucht Article* being red, and the pannell indytit, fforfamekill as fcho, haifing confauet ane deidlie haitrent aganis *Williame Mure*, flesccheour, a fyve yeir fyne, for calling *Cristiane Grahame* ‘ane rank Witche,’ fcho, in revenge thairof, come to the said *Williame*, vpon the Hie Streit of Glesgow, and in grit wraithe said to him, ‘Go thy wayis hame, bludie boutcher that thow art, thow fall nevir sie the calfay¹ agane, bot fall suddanlie schute to deid in thy awin chyre!’² Accordring to the quhilk thraitning be the said *Margaret* hir Sorcerie, Devillerie, and Incantatioun, ane seiknes was laid vpon the said *Williame*, and vpon the morne thaireftir, in his awin chyre, in grit suddantie deceiffit: Quhilk fcho hes confessit to be of verritie, in presens of Witnelles; and sa is airt and pairt of his death.—It is allegit be the pannell aganis the *Aucht Article*, *ut supra*, with this eik,³ that thair is nathing qualifeit thairin of Witchcraft done be hir to him, bot that fcho gaif him evill woirdis, and be thais woirdis he deceiffit. As to the pretendit Confessioun thairin contenit, anfuersis thairto *ut supra*.—My lord Aduocat repeittis the woirdis of the Dittay, and former anfuersis maid be him to the haill former poyntis thairof.

It is forder allegit be the pannell and hir prelocutouris to the *Nynt Article*, anent the bewitching of *Allane Speiris*, in maner thairin specifit, without offence of my lord Aduocat, that all thais Articles contenit in the Dittay ar meir⁴ fabulous, resolveing only vpon ‘he said and fcho said.’⁵ And forder, oppones to his lordschip all the authoriteis foirfaidis; and na practiques in the contrar ar producet, bot ane naikit assertioun.—My lord Aduocat repeittis the Dittay, quhilk is verrie relevant, and als relevant a Dittay as ever was maid in Scotland, vpon sic a subiect; quhilk is mair relevant in everie article nor the Dittayis producet aganis *Barbara Naper*, *Ewfame M^ccalzeane*, and *Agnes Sampson*e, quha war put to ane Assyse, and convict, &c.⁶

The pannell addis forder, that *damnum infecutum ex longo intervallo* is nocht relevant; pag. 717, Lib. quinti, sectionis tertij Martij Dalrio.

THE *Tent Article of Dittay* being red, and the pannell thairby accuset, beiring that a tua yeir fyne, or thairby, ane discord falling out betuix hir and *Alexander Boig*, sinyth in Garboillis, about the bying⁷ fra hir and *Johnne Dynning*, hir husband, of ane irne studie to *Williame Wemyes*, fcho thraitnet to do the said *Alexander* ane evill turne; ffor performeing quhairof, fcho, be hir devillerie and Witchcraft practizet be hir, laid ane crewall seiknes vpon the said *Alexanderis* bairne, sa that, with continuall fueitting, within tua dayis the bairne deceiffit, &c.—AND fielyk, the *Last Article of Dittay* being red, and fcho also accuset thairof, beiring hir to haif bene thir aucht or nyne yeiris bygane ane cowmoun

¹ Causeway, or street.² Chair.³ Addition.⁴ Merely.⁵ Mere matter of idle

hearsay, without foundation in truth, and not supported by legal evidence—‘says he’ and ‘says she.’

⁶ See their Trials, in this Collection, Vol. II., pp. 230, 242, and 247.⁷ Purchasing.

confulter with Witches, speciallie with *Cristiane Grahame*, *Katharene Blair*, and vther Witches and Sorceraris, and ane seiker of help and responsses of thame, baith for distruction of dyuerse perfonnes, men, wemen, and bairnes, be Sorcerie, Witchcraft, and Incantatioun, and vtheris devillische meanis, exprellie forbidden be the Lawis of Almychtie God, and Municipall Lawis of this Kingdome ; as also for cureing and help of hir self, in dyuerse seiknesses, and of dyuerse hir freindis and acquentance, &c.

IT is allegit be the pannell and hir prelocutouris against the *Tent Article*, that the samyn is nawayis relevant, for the argumentis befor proponit, with this additioun, that in accomplisheing of Witchcraft, practizeing thair of, the maner, forme, and qualitie of Inchanting is necessarilie requyret, quhilk is nocht heir lybellit ; nather that thair was ony Witchcraft vset be the pannell be ony Article of the Dittay, and be woirdis, signes, croces, ruitis, herbis, poyfones, or be inchantit pictouris, speiches, or be invocatioun of the Devillis name, without the quhilkis Witchcraft can nocht be accomplischet.—As to the *Last member of the Dittay*, it is sa generall, that it mereittis na ansuer. As to that poynt of the Dittay, anent consulting with *Cristiane Grahame* and *Katherine Blair*, that is altogidder generall and irrelevant, nocht condiscending vpon the tyme and place, *quando et ubi*, nor yit condiscending quhairvpon they consultit, quhiddir vpon Witchcraft or vthirwayis ; and that the pannell, the tyme of thair meitting, knew thame to be Witches, and consultit vpon Witchcraft with thame as Witches : And quhair as, scho helpit hir freindis, *non relevat*, nocht condiscending thair names, or quhair-with they war helpit. ITEM, it is ansuerit to that pairt of the Lybell, *per totum*, quhair it is said, that the pannell inflictit diseassis, be Inchantment, and Sorcerie, and Witchcraft, nocht condiscending quhat soirt of Inchantment or Sorcerie ; *quia vt inquisitio sit valida, oportet sit clara, certas delicti qualitates et circumstantias continens, de quibus posset Judex judicare* : Bot, *de incantamentis in genere nemo Judex potest judicare* : Ergo, the species of the Inchantment man¹ be expressit be sum signe or speciall deid ; *et ratio est, quia ne per incertitudinem, generalitatem, et obscuritatem tollatur reo defensio*. DELRIO, Lib. 5, sect. 2, pag. 617. I argu, *a simili*, iff it war lybellit, that a man had burst out ane vther manis guttis with rolling over ane beist vpon him, *non relevat*, except ye say quhat beist, and sic ane beist as mycht haif done it ; ffor ane mous could nocht haif done it ! Ewin sua, it being only lybellit, it was done ‘ be Inchantmentis :’ And gif thay war speciall, I wald contend, that thai war naturall meanis, and na Sorcerie. And thairfor, the generalitie is altogidder irrelevant, takand away my exceptioun ; for gif thai war speciall, we mycht resson and dispute quhiddir thay war Inchantmentis or no Inchantmentis.

¹ Must.

ITEM, *per totum* to the haill lybell, *non relevat* ‘vncouth feiknes,’ except it war in lyk maner qualifeit, quhat is vncouth; ¹ ffor quhat can the Affyse cognosce quhat is vncouth or nocht vncouth, it nocht being condiscendit quhat is ‘vncouth feiknes,’ quhilk is to be judget be thame quhiddel it be vncouth or nocht? And for the sueiting, *nullo modo relevat*, for the proponer suat ² in ane feiknes ane haill moneth, and sueitting is ane naturall purgatioun. *Igitur*, &c.

The Aduocat repeitis the haill Articles aboue writtin, quhilkis ar speciall in thame felffis.

THE JUSTICE and ASSESSOURIS continewis thair Interloquitour, vpon the haill allegiances aboue writtin, to the morne; and Ordanis the pannell to be tane bak agane to waird, in the mean tyme. The Affyse wairnet *apud Acta* to compeir agane the morne, the xxj *infantis*, in the hour of caus; ilk persone vnder the pane of tua hundreth merkis.

INTERLOQUITOUR of the Judges and Assessouris.

Mar. 21.—THE JUDGES and Assessouris, be thair Sentence-Interloquitour, ³ Repellis the haill allegiances aboue writtin, in respect of the Dittay, and ansueris maid be his Maiesteis Aduocat, in fortificatioun thair of. And as to *the last Article*, quhilk is generall, ffindis the samyn relevant, with ony ane of the ten Articles of Dittay, *et non per se*: And thairfoir, Ordanis the samyn to pas to ane Affyse, viz. the haill ten Articles of Dittay, as relevant; and the last general Article, with ony ane of the ten.

ASSISA.

Johnne Lawfoune, mercheand burges of Glesgow,	Robert Bell, wrycht thair, James Mitchell, tailzeour,	Airthour Gilmour, mercheand, James Fallis, mercheand,
Jo ⁿ Dikfoune, mercheand thair,	Patrik Bell, elder,	Johne Boyd, mesoune,
Andro Fales, mercheand thair,	Willame Anderfoune, cordiner,	Johnne Anderfoun, cordiner,
George Louk, mercheand thair,	Johnne Gilmour, mercheand,	Andro Ker, cordiner, burgeffes of
Willame Neilfoun, maltman thair,		Glesgow.

OBJECTIONS against Affisers.

It is allegit be the pannell aganis *Johnne Dikfoune*, that he can nocht be admittit vpon hir Affyse, becaus thair is inimitie and evill will betuix *Johnne Dynning*, the pannellis husband and him, vvreconceillit this ten yeir bygane: Lyk as, the said Johnne Dikfoune, being dyuerse tymes travellit with to be reconceillit with the said Johnne Dynning, refusit.—It is ansuerit, the allegiance aucht to be repellit as nawayis relevant, becaus inimitie is na caus, except he say, that thair was bluid betuix thame.—It is forder allegit, that he can nocht be admittit, becaus he hes behaivit him self as pairtie, and hes gevin partiall Counfall, in preiudice of the pannell; in sa far as scho, being tane be the Proveist, Bailleis, and Counfall of Glesgow, without ane Warrant, out of hir awin hous, was put in waird in the Castell be thame: In the quhilk taking and committing of hir to waird, the said Johnne Dikfoune wes ane speciall assistit of the saidis Proveist and Bailleis.—It is ansuerit be the persewaris, that the allegiance mereitis nocht ane ansuer, seing he did nothing but the dutie of ane honest citizen and burges, to assist the Magistrait to apprehend a malefactour, being suspect of sic haynous crymes.—Johnne Dikfoune, being

¹ Strange; indescribable.

² Sweated.

³ Interlocutory sentence, or judgment.

folemlie fuorne, and declairing that, to his knowlege, thair was nevir discord nor inimitie betuix Johnne Dynning and him, the Justice thairupoun, and vpon his declaratioun that he had gevin na partiall counfall in this cause, admittis him.

It is allegit aganis *Walter Sterling*, mercheand, that he can (nocht) be vpon this Affyse, becaus he is brother-in-law to vmq^{le} *Robert Mure*; thair being ane speciall poynt of Dittay fet doun aganis the pannell, for allegit iniurie done to Robert Mure.—Ansuerit, ancht to be repellit, becaus thair is na persute movet aganis the pannell be the kyn and freindis of Robert Mure, and thairfoir fould be admittit.—It is forder allegit, that Walter Sterling, brother-in-law to Robert Mure, can nocht be admittit, becaus ane Dittay being fet doun aganis me for ane wrang done to Robert Mure, ilk poynt of Dittay is fund relevant and ordanit to pas to ane Affyse; the said Walter can nocht be ane Affysour aganis me, being persewit vpon my life.—My lord Aduocat ansueris *ut supra*, that nochtwithstanding thair of he fould be admittit, except Robert Mure, or sum of his freindis, war ather persewaris or defenderis, or vpgewearis of the Dittay, or Informeris to his Maiesteis Aduocat thairin.—THE JUSTICE Ordanis Walter Sterling to stand by; and to call ane vther.

It is allegit against *William Neilsone*, elder, that he can nocht pas vpon this Affyse, becaus he is brother-in-law to *Johnne Nicoll*, wryter, quha hes behauit him selff as pairtie, in geving informatioun of the Dittay, and is present at the bar assisting the persewaris in this persute.—Ansueris, the allegiance aucht to be repellit, becaus Johnne Nicoll is nocht a persewar, nor the Summondis is nocht raist at his instance.—William Neilsoun, being fuorne, and purget be his ayth of partiall counfall, is admittit be the Justice.

William Anderfone, cordiner. It is allegit aganis him, that he can nocht be admittit vpon this Affyse, becaus the pannell, haifing skill in chirurgerie, fauld to him sum drogis, quhilk he haifing postponit the pannell in payment, scho thairfoir persewit him be ordour of Law thairfoir; quhairvpon ane inimitie fell out betuix thame, quhilk is yet vnreconceilit.—The said *William*, be his grit (aith) being purget of partiall counfall, is admittit.

VERIFICATIOUN *of the perticuler poyntis of Dittay.*

MY Lord Aduocat takis instrumentis of the fweiring of the Affyse; and, for verificatioun of the perticuler poyntis of Dittay following, vses and produces the probatioun and Witnessis efter specifeit. And first, for Verificatioun of *the first Article (of Dittay)* anent *Cuthbert Greg*, produces *Charles Pollok* and *Margaret Dynning* as Witnessis, desyreing thair Depositiones to be tane.

Chairlis Pollok, couper, burges of Glesgow, sworne judiciallie, and examinat in prefens of the Judges, pairteis, and Affysouris, and purget of partiall counfall, mareit, of the aige of threttie yeiris, declairis, that a thre yeir syne, or thairby, ane differ¹ being betuix Cuthbert Greg and Cristiane Grahame, for ane dog quhilk Cristiane desyret fra him, and he refuisset, ansuering to hir agane, ‘I rather ze and my huffie² baith (meaning be *Margaret Wallace*) war brunt or³ ze get my dog!’ Quhair of *Margaret Wallace* getting knowlege, scho comes to *Cuthbert* and fayis to him, ‘ffals land-loupper loun that thow art, fayis thow that Cristiane Grahame and I fall be brunt for Witches? I vow to God I fall do to ze ane evill turne!’ And declairis, that, within foure or fyve dayis thaireftir, the said *Cuthbert* fell seik. Being inquyret, gif he hard hir say thir woirdis, ‘that *he* (*she*)

¹ Quarrel; *difference*; altercation.

² *Cummer*; gossip.

³ Rather than.

fould mak *hir* (*him*), within few dayis, nocht of habilitie to wyn ane caik of breid?' Denyis that he hard sic woirdis—bot only that scho fould 'do him ane evill turne.' Sayis, he saw *Cuthbert Greig*, the tyme of his feiknes, fueitting and brocheing¹ in ane vncouth feiknes, fairlie handillit, quhairby he was nocht able to gang; bot knawis nocht how lang he swat, or abaid in that estait. Demandit, gif he saw Margaret Wallace cum in to Cuthbert, at ony time of his feiknes? Declairis, he saw hir nocht within that hous; and forder, knawis nocht anent that first Article of Dittay.

Margaret Dynning, the spous to Andro Lennox, fuorne and examinat vpon the first Article, concerning Cuthbert Greg, and desyret to tell the treuth, sa far as she knawis thairanent; Depones, that the tyme of Cuthbertis feiknes, the deponer and Margaret Montgomerie, with Margaret Wallace, past all thre togidder vp to Cuthbertis hous, to visseit him, the tyme of his feiknes; at thair in-cumming, declairis, scho saw Margaret Montgomerie, with Margaret Wallace, pass to his bed-syde quhairin he lay, and that the said Margaret Wallace sat down with hir bak to him, the deponer hir self nocht being able to wyn ben the hous, becaus of the thrang of peopill in the hous, at that tyme: And forder knawis nocht.

For the *Second poynt of Dittay*, concerning *Johnne Robertoun*, querriour, desyres the said Johnne Robertoun, as persewar, his ayth to be tane, and that poynt of Dittay to be fuorne be him, gif he has just caus to persew the pannell as giltie thair of? Quha, being solemplie fuorne, declairit, that the said Margaret Wallace avowit 'to be avengit vpon his flesche!' And that schortlie thaireftir, conforme to the Dittay, the feiknes was laid vpon him; and thairfoir, hes just caus to persew the said Margaret, for that poynt: And eikis² thairto, that sen the making of that vow be hir, he was nevir able to wyn him self fyve s. (shillings.) Quhairvpon my lord Aduocat askit instrumentis.

Chairles Pollok being product, and fuorne vpon the secund Article of Dittay, anent the said Johnne Robertoun, querriour; declairis, he knawis na thing thair of, except allanerlie, that he saw him hevelie diseasit.

As to the *Thrid Article of Dittay*, referris the notorietye of the pannellis giltines thair of to the Assyse.

For verificatioun of the *ffourt Article*, my lord Aduocat product Cristiane Grahames Deposition, tane be my lord *Archebyschope of Glesgow*. As also, produces *Marioun Mitchell*, the spous of Johnne Hunter, and desyres hir to be examinat, and her Deposition to be writtin.

Marioun Mitchell, the spous of Johnne Hunter, tasker,³ fuorne, and examinat

¹ Commonly pronounced *broiching*; in the last stage of exhaustion, through profuse perspiration. The English word *sweltering* conveys something of the same meaning.

² Adds; subjoins.

³ Day-labourer.

vpone the ffourte Article of Dittay, in prefens of the Judges, Affyfouris, and parteis, judicialle, Depones, that four yeir fyne, or thairby, Margaret Wallace and Robert Stewart come to the duelling-hous of Alexander Vallange, in Glesgow, quhair the deponer was fervand for the tyme, and callit for ane choppin of aill; quhilk was brocht be ane boy to thame, namet James Synfone; and in drinking thairof, betuix Robert Stewart his taking the cope and offering it to Margaret Wallace, the said Margaret tuik ane sudden brasche of feiknes, vnkawin to the deponer quhat feiknes it was, quhairin the said Margaret was fa extremelie handillit, that scho was liklie to ryve hir selff:¹ Thaireftir scho cryis, ‘Bring me hither my deir burd!’—And Margaret Montgomerie, the guid-wyfe of the hous, being present, anfueris hir, ‘Quhilk deir burd wald ze haif? I beleif,’ sayis scho, (thinking it had bene *Johnne Dynning*, hir husband,) ‘he is nocht at hame!’ ‘Na,’ anfuerit Margaret Wallace, ‘bring me *Cristiane Grahame*, my deir burd!’ All this quhyle, Margaret Montgomerie was halding hir be the ane hand, and Cristiane Mcclauchlane be the vther. Thaireftir, at hir desyre, Robert Stewart past, and with grit dilligence brocht Cristiane Grahame to hir, at quhais suddane cuming, Margaret Montgomerie sayis to Robert, ‘Jesús saif ws! I beleif thow hes met her be the way!’ And Cristiane Grahame anfuerit, ‘ffayth, he met me nocht, bot come and brocht me out of my awin chalmer; and fra I hard that my burd was fa diseasit, I sped me hither!’ Sayis, thaireftir, that Cristiane Grahame tuik Margaret Wallace be the schaikill-bane,² and kist hir; and in hir airnes cayreit hir down the stair, saying to hir, ‘Nothing fould aill hir.’ Eftir quhais outgoing, Margaret Vallange, dochter to the said Margaret Montgomerie, ane infant bairne of foure yeir auld, followit thame down the stair; and in the ganging out at the zet,³ over the dur-threschold, scho fell down in a suddane and grevous payne, and grat vehementlie. Incontinent thaireftir, the said Margaret Wallace come bak agane, and declairit that the bairne was greting at the stair-fute; and desyret hir mother to bring her vp. And thaireftir, the bairnes mother cuming to hir and taking her vp, the bairne cryis, ‘Mother, mother, ding me nocht, for thair is ane preyne⁴ raschet throw my fute!’ And the bairne, being brocht vp to the hous, grat continuallie all that nycht, and quhill⁵ the morne at that same tyme of the day. The Deponer forder declairis, that scho and the bairnes father and mother sat vp all that nycht, and walkit⁶ the bairne; and that vpon the morne thaireftir, the said Margaret Wallace come to vissit the bairne, and desyret Margaret Montgomerie, hir mothir, to send for Cristiane Grahame, making all that tyme ane grit mone⁷ for the bairnes feiknes: To quhome Margaret Montgomerie anfuerit, ‘I haif nothing ado with Cristiane Grahame, and

¹ This attack was probably a hysterical affection, or rather a kind of convulsion fit.

² Wrist.

³ Gate; wicket.

⁴ Pin.

⁵ Until.

⁶ Watched.

⁷ Moan; lamentation.

will nocht fend for hir! ffor gif God hes laid on that feiknes on my bairne, he will, at his awin plesour, tak it af agane!’ Sayis thairefter, that Margaret Wallace maid anfuwer to hir, ‘Gif 3e knew of Cristiane Grahame skill, and quhat scho can, 3e wald nocht refuse to fend for hir; for scho can do als mekill as God in the Heavin!’ Deponis forder, that schortlie thaireftir, Margaret Wallace, by¹ the said Margaret Montgomeris knowlege, brocht the said Cristiane Grahame in to the hous, the bairne being lying as ane deid stock in the bed, and haifing gevin over greting for the tyme; and at thair incomming, ane heip of grene webbis² being lying on the fluir, Margaret Wallace lap over the same, and cumis to the bairne, and takis hir vp out of hir bed, and settis hir on Cristiane Grahames knie; and declairis, that eftir the bairne had sittin ane schorte space vpon the said Cristianes knie, scho grew better, and eftir that mendit.

FOR verificatioun of *the ffyft poynt*, my lord Aduocat producet certane Depositiones tane befor *the Bischope of Glesgow*; ³ with ane vther Deposition tane befor *the Commissar of Glesgow*; as also, producet certane Depositiones tane be the said *Archebischope*, at command of the Secreit Counfall; and thairwith produces Andro Mure, chirurgane, as Witnes; desyring him to be suorne, and his Deposition to be writtin.

Andro Mure, chirurgane, mareit a fevintene yeir fyne, of the age of xliij yeiris, suorne, and purget of partiall counsell; being inquiryet, quhat he knawis concerning the ffyft Article of Dittay, red in his audience? Depones, he knawis nothing of Margaret Mures feiknes specifeit in the said Article, except that he himself, cuning down the Brig-gait,⁴ he saw Cristiane Grahame cum furth of Marioun Mures hous; quha thaireftir come to the deponer, and desyret him to gang in to the said Marioun: And the deponer, at hir desyre, haifing past in to the hous, at his incuming ane roistit hen was sett down on the buird;⁵ and the deponer, with David Scheirar and the said Marioun Mure, sat down at the buird togidder; and within ane schorte space thaireftir, Margaret Wallace come in to thame: Declairis, at Margaret Wallace incuming, ane guise⁶ was sett down on the buird: And the deponer, persaveing that sic intertenement wald draw him to charges, he payit his choppine of wyne and come his way, and left the rest of the cumpanie behind him. And forder kuawis nocht.

FOR verificatioun of *the Saxt Article, Sevint, and Aucht Articles*, produces the Deposition of Alexander Montgomerie and vtheris, subscryuit be *my Lord of Glesgow*; togidder with ane Testimoniall of the Minister, testifeing Mr Alexander Montgomerie his feiknes, that he was nocht able to travell, without hazard

¹ Without; contrary to. ² Webs of newly weaved, or unbleached, linen cloth. ³ James Law, Archbishop of Glasgow; who had been translated from the See of Orkney, anno 1610. ⁴ The Bridge gate of Glasgow. ⁵ A roasted fowl was set upon the table. ⁶ Goose.

of his lyfe: And referris the notorietye of the pannellis giltines of the faidis Articles to the Affyfe.

FOR preveing of *the Nynt Article of Dittay*, produces Robert Dykes, Johnne Pincartoun, Thomas Wilkyne, and Johnne Thomefone, as Witneffes, defyreing thair Depositiones to be tane, for the Affyfe better informatioun.

Robert Dykis, maltman in Ruglen, mareit, fuorne and examinat, in prefens of the Judges, Affyfouris, and pairtie, in judgement, vpone the Nynt Article, to declair the verritie, and purget of partiall counfell, Depones, that at command of vmq^{le} Allane Spens, the deponer come to Johnne Dynning, and defyret ane ficht of his elwand,¹ and, conforme to the Dittay, the ellwand was brokin; and a fyftene dayis thaireftir, or thairby, the faid Allane Spens being in Glesgow, and fleing ane fchoure,² come befor Johnne Dynningis buthe-dur,³ quhair the deponer hard Margaret Wallace, Johnne Dynningis wife, fay thir woirdis to Allane, ‘ Away, deboifchet knave!’ Depones, the faid Allane Spens fell feik; bot knawis nocht how fone eftir thais woirdis war spokin this feiknes fell⁴ to him. Declairis, he come in to him the tyme of his feiknes, and faw him hevelie difeasit with continuall fueitting.

Thomas Wilkyne, burges of Ruthirglene, mareit, fuorne in prefens of pairtie, Judges, and Affyfouris, in judgement, Depones, he knawis nocht Margaret Wallace, befor his cuning to Edinburgh. As to that Article of Dittay concerning Allane Spens feiknes, declairis, he was hevelie difeasit with ane fuddane and grevous feiknes, quhairof he deceiffit; bot knawis nocht quhat or quha war the causeris thairof.

Johnne Thomefone, burges of Ruthirglene, mareit, and fuorne vpone the nynt Article of Dittay red to him in judgement, in prefens of the pairteis, Judges, and Affyfouris, is conforme to the faid Thomas Wilkyne.

Johnne Pincartoun, fuorne and demandit vpone the nynt Article, quhat he knawis thairintill? Depones, he was narrest dur nychtbour⁵ to Allane Spens, and faw Johnne Dynningis elwand brokin, at quhilk tyme the faid Johnne Dynning and Allane Spens war likelie to go by the earis for breking of the faid elwand. Declairis, that he hard Margaret Wallace, fcho being present with hir husband, fay to him, ‘ Go your wayis joy, let him allane,’ (meaning be Allane Spens,) ‘ I fall tak ane amendis thairof!’ Sayis he knew that Allane Spens fell in ane hevie difeas, bot knawis nocht quhat was the caus thairof.

FOR verificationn of *the Tent Article* of Dittay, my lord Aduocat vfes the aithe and declaratioun of *Alexander Boig* in Garboillis, perfewar thairof, and defyres that Article to be fuorne be him to the Affyfe, for thair better informa-

¹ Ell-wand, yard measure.

² For shelter from the shower.

³ Shop door.

⁴ Happened.

⁵ Next-door neighbour.

tioun: Quha being fuorne, declairit that he had just caus to perfew the said Article, as is set down thairintill, aganis the pannell.

Produces also George Thomefone and James Pollok, Witneffes, desyreing thair Depositiones to be ressaunt for preving of the said tent Article of Dittay.

George Thomefone, duelland vnder Sir George Elphingstoun of Blithewoid, kny^t, fuorne and examinat in judgement, Quhat he knawis anent the said tent Article of Dittay? Depones conforme thairto, that he hard Margaret Wallace and Alexander Boig flyteing with vther; and that scho said to him, in a grit rage and furie of mynd, that scho sould 'do to him ane evill turne,'—or sould 'gar get to him ane evill turne!' And within thre dayis thaireftir, the said Alexander his bairne fell feik, and deceifit of sueitting and vther grevous panes.

James Pollok, gairdner to Sir George Elphingstoun, fuorne and examinat vpon the said Article, Depones, he being working at the hedge within the 5aird, he hard Margaret Wallace and Alexander Boig flyteing togidder; and that in hir anger scho said to him, scho sould 'do to him ane evill turne!' And schortlie thaireftir, his bairne contractit ane feiknes, and deceifit.

My lord Aduocat takis instrumentis of the Witnes judiciall declaration aboue writtin; quhilk he repeatit to the Assyse, with the vther Depositiones product be him.

THE JUSTICE and ASSESSOURIS continewis this dyet to the morne. The Assyse wairnit to be present the morne, at xj houris; ilk persone vnder the pane of iij^s merkis.

OBJECTIONS be the Pannell to hir pretendit CONFESSION, and haill Probatioun adducet.

Mar. 22.—IT IS OBJECTIT be the pannell and hir prelocutouris aganis *hir pretendit Confessioun*, maid be hir befor the Lordis of Secreit Counsell, that the samyn can preve nathing of the haill Dittay, nor na pairt thairof. And as to that pairt of hir allegit Confessioun, quhair as scho confessit 'that scho was content, in caice it sould be provin that scho was in *Cuthbert Gregis* hous, to grant the haill Dittay!' Anfueris thairto, that is na Confessioun of the Dittay, nor of na pairt thairof; ffor the Dittay is set down vpon Witchcraft, and that the pannell practizet Witchcraft vpon the persones contenit in the Dittay, be Sorcerie and Inchantment; scho hes nocht confessit the samyn be hir Deposition, nor na pairt thairof; sua that hir Deposition can be na probatioun of Witchcraft, nor of practizing thairof; bot only, that gif it fall be provin aganis hir, hir being in Gregis hous, quhilk scho hes denyit, scho hes thairin committit onlie a lie, and being perfewit and provin, is content to vnderly the pwneischment appointit aganis Leafing-makeris. *Secundo*, be the Confessioun contenit in hir

Deposition befor the Counsell, scho is only content, gif that haill Article be provin aganis hir, than to confes all the rest to be trew; bot albeit it be provin that scho was in the hous, it is nocht confessit thairby that scho was ane Witche. *Tertio*, it is nawayis provin be the Deposition producet, that scho was within the hous, becaus thair is only ane woman producet as a Witnes to verifie the same. It is forder allegit, that thair can be na probatioun vpone that hir Confessioun maid befor the Counsell, becaus the samyn is na poynt of Dittay.

It is ansuerit be the persewaris, as to the obiection maid against the Deposition maid be the pannell befor the Counsell, that obiection aucht nocht to be respectit, in respect of the Judicial Confessioun maid befor the Lordis of Counfall, quhilk bindis hir; be the quhilk it is manifest, that scho hes denyit the treuth, in respect of the probatioun led be dyuerse of the Witneses producet, verifeing hir to haif bene in Gregis hous the tyme of his seiknes, quhilk the persewaris referris to the Inqueistis knowlege and Witnes Deposition. And desyres it may be rememberit to the Assyse, quhat sentence was gevin aganis *Patrik Cheyne*, vpone the lyk Deposition.

It is forder allegit be the pannell, that the Deposition maid befor my Lord of Glesgow, the samyn can mak na fayth, in respect his Lordschip had na war-rand to that effect.—It is ansuerit be the persewaris to that obiection, that the samyn aucht to be repellit, in respect of my Lord of Glesgowis Judicial Declaration maid be his Lordschip, that he had ane special Letter direct to him be the Lordis of Secreit Counsell, for taking of the saidis Depositiones, and of the article subioynet to hir Depositiones subscriuit be the Clerk of Counsell.

It is allegit be the pannell, that nather the first nor secund Deposition of *Cristiane Grahame* can be respectit: *ffirst*, becaus it is nather hir principall Deposition, nor Extract thairof; nocht the principall, becaus it is nocht subscriuit be hir, nocht the Extract, becaus nocht (subscriuit) be ane Clerk of Court: *Secundo*, can preve nathing, becaus it is maid, scho nocht being suorne to that effect: *Tertio*, it is maid be the pairtie being absent aganis quhome it is deponit, quha, gif scho had bene requyret, wald haif compeirit, and offerit to haif bene confrontit with hir; quha, gif scho had bene confrontit, wald haif denyit the samyn: Lyk as, scho cum of set purpois to the Tolbuth, befor hir Conviction, and offerit hir selff to haif bene confrontit, quhilk was denyit. *Last*, hir Deposition can work nathing aganis the pannell, being ane condampnet persone; and the Deposition aucht nawayis to be respectit, except it war instantlie verifeit be the proces, that befor the making of the said Deposition, or the tyme of the making thairof, that the said Cristian Grahame had confessit the haill poyntis of Dittay than laid to hir charge: ffor as the woirdis ar confaet, thay ar spokin be compariesone, that eftir scho had denyit the poyntis of Dittay laid to hir

charge, and declairit hir self to be altogidder innocent thair of, and the pannell being at that tyne ane honest woman, sua repute and haldin, scho sayis, ‘ scho was als frie of Witchcraft as scho or ony vther in the toun !’ Forder, the Confessioun can nocht be respectit, becaus it is nocht maid befor ane Judge haifing power to tak her Confessioun, thair being na Commissioun producet for taking of the said Confessioun. Nixt, the Deposition beiris nocht that scho was ony wayis interrogat or speirit¹ at, and is nocht maid in judgement, becaus the Assyse was than incloset, being than hir Judges. Last, it beiris nocht that this pannell was airt or pairt of ony Sorcerie, bot of sic deidis as scho did, and confessit to haif done : And referris to the Assyse, hir Confessioun, that scho was innocent of all. And as to the worsettis,² thay ar na pairt of Witchcraft, be reveing³ or drawing thame furth of hir purse.

It is ansuerit thairto be the persewaris, that the obiectiones maid aganis the tua Depositiones producet is nawayis relevant, and is nocht to be respectit be the Assyse, becaus the samyn is subscryuit be *my Lord Archbischepe of Glesgow*, as Lord of the Regalitie, and quha was present the hail tyme of Cristiane Grahames tryell, nocht onlie as Lord of the said Regalitie, bot also as being ane of the Lordis of his Maiesteis Previe Counfall ; and thairby, be vertew of his office and autoritie, haifing sufficient power to tak cognitioun of quhatfumeuir ryote or offence committit to ony of his Maiesteis subiectis, be quhatfumeuir maner of way, within that pairt of his dyocie,⁴ or ony pairt of the kingdome. *Igitur*, &c. — To the quhilk it is ansuerit be the pannell, that the Deposition was nocht subscryuit be *my Lord of Kilsyth*, to quhome the Commissioun was grantit, bot is allanerlie subscryuit be the Proveist and Bailleis of Glesgow, quha ar pairteis : Lyk as presentlie, at the dyteing heirow, Gabriell Cunninghame, standing at the bar, hes professit him selff to be a pairtie and informer to my lord Aduocat. Last, her Deposition can nocht be respectit, becaus scho alleges hir selff to be participant of the same cryme ; and sa hir Deposition, of the Law, can mak na fayth, except scho had confessit scho had maid hir Deposition or Confessioun eftir tortour.

To the quhilk it is ansuerit be the persewaris, that the saidis Depositiones ar subscryuit be the Proveist and Bailleis of Glasgou, quha war a pairt of the Commissioneris nominat and appointit to the tryell of the said Cristiane Grahame, as also subscryuit be vther tua men of grit credeit, viz. Mr Johnne Bell and Mr Robert Scott, Ministeris of Glasgou, quhais subscryptions ar sufficient to geve autoritie to the Depositiones, as evir has bene fund in this judgement, in all matteris of Withecraft, and speciallie, in the proces of *Euphame Mcalzeane*, *Barbara Naper*, and *Agnes Sampson*. The last pairt aucht nocht to be

¹ Enquired.² The coloured worsted threads formerly noticed.³ Stealing.⁴ Diocese.

respectit, in respect *fecij criminis* ar ressaunt and admittit in all crymes of Tressfone, Erracie,¹ and Withecraft.

Quhairvnto the pannell and hir prelocutouris anfuers to thais tua memberis of my lord Aduocattis anfuers, that the tua Ministeris befor quhome Cristiane Grahame hir Depositionun was maid, that thai war honest men, it is nocht denyit; bot it followis nocht, becaus thay are honest men, thairfoir thay had power to tak hir Depositionun, in ane matter concerning hir lyfe, without Commissioun. For anfuers to the proces allegit aganis *Euphame Mcalzeane, Barbara Naper, &c.*, agreis thairto, in regaird thay war examinat be Mr James Carmichell, to quhome speciall Commissioun was gevin for that effect. Last, it is declairit be the pannell, that evin in the cryme of Erracie or Lese-maestie, a pairtner of ane cryme² is nocht to be credited without tortour; and repeittis the tortouring of *Sprote* in Tressfone, becaus he was partiner of the Tressfone.

It is objectit be the pannell and hir prelocutouris, aganis the Depositionun maid be *Margaret Grahame*, dochter to Cristiane Grahame, befor the Commissar of Glesgow, it can nocht be respectit; first, becaus it is not maid judicillie, befor ane Judge haifing power to that effect: *Secundo*, befor ane Commissar, without ane Commissioun, quha had na power in matteris of Withecraft, and vtheris concerning lyfe and daithe: *Tertio*, was nocht requyret Witnes befor ane Judge haifing Commissioun, nor sworne to that effect: *Quarto*, hir Depositionun can nocht be respectit, in respect of hir age, scho nocht being past xvij³ yeiris: *Quinto*, in all hir Depositiones, nevir a word deponet that scho knew Margaret Wallace to be ane Witche, or a practizer of Withecraft; bot only that hir mother and scho past to the zaird togidder, tynt hir pantoun, quhilk was put one agane be Cristiane Grahame, &c.: *And* quhair, it is affirmet in the Depositionun, that scho tuik ane schooe, and pat in sum seidis thairin, that is nocht lybellit, and can nocht be respectit, becaus nathing followit thairupoun: *Sixto*, na Depositionun can be respectit at all, of ony persone, as Witnes, bot only sic as ar producet in Judgement,⁴ to the effect the pannell may object aganis thame, quhidder thay may depone aganis hir or nocht. And thairfoir, of all Law, it is inviolablie obseruet, that na faith is gevin to Testimoniallis, bot as Witnesses, in a matter of fourtie schillingis.

It is anfuersit be the persewar, as to the allegiance and objection aganis *Margaret Grahame*, the samyn aucht to be repellit, it being tane befor ane Judge-Ordiner, judicillie, viz. the Commissar of Glesgow: And as to hir age, scho hes deponet scho is past xiiij yeiris, quhilk is referrit to the Assyse knowlege; and that than scho mycht haif mareit lauchfullie, mekill mair to beir witnesing in

¹ Heresy.² *Particeps criminis*.³ *Sic*; xij?⁴ This is the first time that this objection is recorded as having been started by the Counsel for the pannell.

obscure factis, sic as ony thing concerning vmq^{le} Cristiane Grahame and Margaret Wallace, quhais companie scho resoirtit daylie. And forder, the persewar referis to the Assyse knowlege, quhat thay know of hir Depositione; and speciallie, gif it was grantit befor my Lord of Glesgow, the pannell hir selff, and sum of the Inqueist: And forder, producet the dome and sentence of convictioun to the Assyse, quhair the Proveist and Bailleis of Glesgow war Commisioneris appointit and set for tryell of Cristiane Grahame, and sa had power to ressaue Cristiane Grahames ayth, for haifing Commiffioun thairto.

It is answert be the pannell, as to that pairt of the answert anent Margaret Grahames age, the Deposition producet beiris na sic thing.—My lord Aduocat, for answert thairto, declairis, he produces ane vther Deposition of hiris of the same dait, beiring hir former age: Quhilk is referit to the Assyse.

Item, the pannell answertis to that poynt, anent the production of Cristiane Grahames Sentence of Convictioun, that the pannell acceptis the same; and protestis that the persewaris repetitioun thairto, for instructing of the Assyse, anent that alledgeance proponit be the pannell, that Cristiane Grahames Deposition, beiring Margaret Wallace to be airt and pairt of all confest be hir to haif done, preves nawayis hir to be gilty of Witchcraft; becaus the convictioun producet, beiris hir to haif denyit all the poyntis of the lybell anent Witchcraft; and scho confesses that scho was pairt-taker of sic thingis as scho confesses hir selff to haif done, it man (*my/l*) be of na deidis impoirting Witchcraft.—The last objectioun proponit be the pannell is nocht to be respectit, in respect of Cristiane Grahames Confessioun and convictioun producet; quhairin scho is convict of tua poyntis, conforme to hir awin Confessioun, viz. the secund and fourt poyntis of Dittay quhairupone scho was indytit.—It is answert be the pannell, that the said convictioun proccidis vpon the admitting of the haill Articles thairto to the knowlege of ane Assyse, sua that the finding of hir gilty of ony of the Articles is nocht the grund of the sentence of Convictioun; ffor thais tua Articles, a pairt quhairto scho is convict, was nocht relevant without the haill Articles had bene admittit; and forder, thir tua poyntis quhairto Grahame is convict, is na poynt of our Dittay.

It is objectit be the pannell aganis *Marioun Mures* Deposition, subferyuit be my Lord of Glesgow, the samyn can nocht be respectit, for the ressones foirsaidis; with this additioun, that gif the said Marioun Mure war now producet as Witnes at the bar, scho wald be repellit; for this resson, becaus be the Deposition it is confessit that scho is father-sister to the bairne quha is alleget to haif bene bewitched or curet be the pannell, as being within degreis-defending to the said bairne mentionet in the Dittay. And forder, it is objectit, that scho had gevin partiall counsell in the caus, quhilk defens is tane fra us be production of

ane Testimoniall, and nocht hir selff. And repeittis all the rest of the objectiones aganis the vther Testimoniall.—The last objectioun aucht to be repellit, in respect of the Deposition of *Marioun Mure*, tane be my Lord of Glesgow, quha had Commissioun of the Counsell, as he hes deponit, and is testifeit be James Prynrois, clerk of the Counsell. Lyk as, the samyn Deposition is subferyuit be the Laird of Mynto, and the Proveist and Bailleis of Glesgow, Commissioneris for Tryell of the said Cristiane Grahame: And as to the objectioun, that scho was within degreis-defending to the bairne, it is anſuerit directlie, that Commissioun be the Counsell for hir examinatioun, the pannell being present, and nathing objectit be pannell in the contrair, is sufficient to elyd¹ that pairt of the said objectioun.

It is objectit be the pannell aganis the Deposition of *Mr Alexander Montgomerie* producet, that the samyn can mak na fayth, it nocht being maid befor ane Judge, nor he ſuorne to that effect; nor nane inquiryng sic thing of him: And ſpeciallie, aucht to haif bene ſummond befor ane Judge-Ordiner, and to haif deponit judiciallie; in respect that letteris war direct, ſummonding him to compeir befor the Juſtice in this judgement, and hes nocht compeirit, being ſummond to that effect; and ſpeciallie, his Deposition could nocht haif bene reſſauit gif he had compeirit, becaus it wald haif bene objectit contrair him, that he and Margaret Montgomerie are brother-bairnes of the hous of Heſilheid,² quhais dochter is allegit to haif bene witchet, be ane ſpeciall poynt of Dittay gevin in aganis this pannell; and ſa, his extra-judiciall Confeſſioun out of all judgement, ſubferyuet be him without Witnes, could nocht be reſpectit.—To the quhilk the perſewaris anſueris, that this laſt objectioun aucht to be repellit, in respect of the Testimoniall producet, beiring Mr Alexander to be ſeik, ſubferyuit be ane Miniſter, quhilk excuifes his abſence: Quhilk Deposition is referrit to the tryell of the Aſſyſe.

IN respect of the quhilkis Depositiones and Verificationes producet to the perſones of Inqueiſt, for thair forder information of the pannellis giltines of the perticular poyntis of Dittay aboue written, Proteſtis for Wilfull Errorr aganis thame, gif thay acquit.

VERDICT. The Aſſyſe, for the maiſt pairt, FYLES *Margaret Wallace* of the *firſt* Article of Dittay,³ anent Cuthbert Greg, couper, and haill circumſtances thair of: AND ſiclyk, all in ane voce, fyles hir of the *fourth* poynt of Dittay, and haill circumſtances mentionet thairintill, anent the conſulting with vmq^{le} Crif-

¹ Cut off, &c. Lat. *elidere*.

² The Montgomeries of Hazelhead, a respectable family in Ayrshire.

³ The Articles of Dittay of which the pannel is found guilty, are rehearſed at length at the commencement of the Trial, being the only part of the Dittay preſerved at full length in the Record. The remainder of the points are pretty largely recapitulated in the preceding arguments, which are of great importance, as they completely illuſtrate the ſtate of the Law and practice on this extraordinary ſubject. More freedom of diſcuſſion was permitted in this Trial, than in any of the previous caſes of a ſimilar nature.

tianè Grahame, ane notorious Witche, for cureing of hir self of ane suddane diseafe, be taking the samyn of hir, and laying it vpon Alexander Vallange bairne; and thaireftir cureing the said bairne of the said diseafe, in forme and maner specifeit in the Dittay: AND lykwayis, for the maist pairt,¹ fyles hir of the *fyft* poynt, anent the cureing of Margaret Mure of the seiknes quhairwith scho was visseit, be Sorcerie and Witchecraft, and consulting with Cristiane Grahame for that effect, in maner contenit in the said *fyft* Article: AND in lyk maner, all in ane voce, fyles hir of the *tent* Article of Dittay, and haill circumstances thair of, anent the seiknes laid vpon Alexander Boig his bairne, be Sorcerie and Witchecraft, in maner specifeit in that Article: AND last, all in ane voce, fyles hir of the generall poynt, as ane cownoun consulter with Witches, thir aucht or nyne yeiris, namelie with vmq^{le} Cristiane Grahame, laitlie convict and brunt for ane notorious Witche, and with Katharene Blair, and vther Witches, and seiken² of help and responsis of thame, alsweill for cureing of hir self of dyuerse seiknesses, and cureing of hir freindis and acquaintance, as for inflicting of dyuerse crewall diseissis vpon dyuerse persones to quhome scho buir ony haitrent; and distructione of thame thairby, be devillrie, Incantatioun, and Witchcraft, expresse forbidden be the Lawis of Almychtie God, and municipall Lawis of this realme. AND CLANGES hir of the haill remanent poyntis of Dittay, and crymes thairin contenit.³

SENTENCE. The Justice, be the mouth of James M'cairtour,⁴ dempster of Court, Ordanit the said Margaret Wallace to be tane to the Castell-hill of Edr, and thair to be wirreit⁵ at ane staik to the deid; and hir body thaireftir to be brunt in asches: And all hir moveabill guidis to be escheit, &c.

Slaughter.

Mar. 27.—MR JOHNNE STEWART of Dowellie, and Thomas Stewart, his brother.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Johnne Low in Gairnetullie; committit vpon the xvij of Januar, 1614 yeiris.

PERSEWARIS, James Low, as brother; Andro Low, burges of Perth, neir kynsman; Sir W. Oliphant. PRELOCUTORIS in defence, Mr Luis Stewart, Mr Robert Lermonth.

It is allegit that this matter can nocht pas to ane Assyse, in respect thai haif obtenit his Maiesteis Remissiou, vnder his hienes Greit Seil, quhilk thay vse and produce, daitit the xxiiij day of Marche, 1618 yeiris.—The Justice ordanis the pannell to find caution to satisfe the pairties; quha, togidder with James Soutter of the Mylnetoun of Fornocht, band and obleist thame, &c.

¹ 'By a plurality of voices,' as it was more recently expressed.
Lauchoun, chancellor.

⁴ Who appears for the first time in this office.

² Seeking.

⁵ Strangled.

³ 'Johnne

**Intercommuning with the MacGregors—Slaughter—Theft—
Fire-raising, &c.**

Apr. 23.—JOHNE MOIR M^cEANE CHERE¹ CHAMRONE (Cameron), and Duncane (Moir) M^ceane Chamrone, his brother.

Dilaitit of the crymes following, viz. The said *Johnne Moir*, ffor being in companie with vmq^{le} Allaster M^cGregour of Glenstra, Johnne Dow M^cGregour, his brother, and vtheris thair kyn and freindis, togidder with the Clan-Chamrone and Clan-Anveroch, and vtheris brokin men and foirneris, to the number of ffoure hundreth perfones, convocat in battell array, vpone the landis of *Glenfrune*,² pertening to the Laird of Lufe,³ in ffbruar, 1603 yeiris; quhair vmq^{le} Alexander Colquhoun of Lufe, accompaneit with certane his freindis, war convenit, at that tyme, be vertew of oure fouverane lordis Commiffioun, to resist the faidis M^cGREGOURIS cruell interpryfes and intentiones. AND for airt and pairt of the steilling and away-taking of sex hundreth ky and oxin, aucht hundreth fcheip and gait, fourtene fcoir horfe and meiris, with the haille pleniffing, guidis and geir of the four-pund-land of Lufe, pertening to the inhabitantis thairof. AND siclyk, the said *Duncane Moir M^ceane Chamrone*, ffor being in companie with Robert Abroche,⁴ Johnne Dow M^callaster,⁵ and vtheris thair complices, ane aucht yeir fyne, or thairby,⁶ at the Slauchter of vmq^{le} James Menzies, brother to the Barrone of Comerie, and Burning of his hous;⁷ and fa was airt and pairt of the faid slauchter, and burning of the faid hous. TO THE TAIKIN,⁸ he hes confessit that he paid thre hundreth merkis to the Barrone of Comerie and his freindis, in Assythement⁹ of the Slauchter and Burning; as at lenth is contenit in the Dittay.¹⁰

PERSEWAR, Sir Williame Oliphant; Johnne Colquhoun, indueller in Leyth, as informer.

The perfones on pannell, being enterit, declairit that nane of the freindis of the Barone of Comerie could perfew thame for the Slauchter of James Menzies; becaus thai had reffaut satisfactioun for the Slauchter and Burning, fra Duncane. And the said Johnne Moir confessit his being at the ffeld of Glenfrune, bot denyis that he did ony fskayth thairat.

¹ John 'the large,' the son of John of 'the mouse colour.' ² See this Collection, II. 430, for an account of the Battle of Glenfruin, &c. ³ Luss, on the banks of Loch-Lomond. ⁴ M^cGregor. Named *Abroche* after his father Duncane, viz, 'of Lochaber.' ⁵ It appears from the Records of the Privy Council, that he was killed in February, 1611. ⁶ Robert Abroche received the Royal pardon, previous to December, 1612.

⁷ As the Menzieses were both interested and most zealously active in furthering the cruel persecutions directed against the Clan-Gregor, so they were particularly obnoxious to the vengeance of that Clan. ⁸ In testimony or *token* whereof.

⁹ That compensation shall thee nought avail,
Which erst necessity, not Justice gave;
Howe'er in others it be held sustainable—
But shall be quoted as sound proof of guilt,
And practical confession of thy crime.

Anon.

¹⁰ The Dittay is not preserved on record.

The Justice Ordanis the Dittay to pas to the knowlege of ane Assyse, &c.

ASSISA.

Johne Naper of Kilmahew,	George Nicoll, cuik in Ed ^r ,	Vmphra Colquhoun, indueller in
Johne Darleith of that Ilk,	James Mitchell in Chapelton,	the Cannogait,
Johne Danielfoun of Dal-	Johne Williamfoun, thair,	Willame Buchannane, thair,
quherne,	Willame Gow in Drymmene,	Adame Clerk, litfler in Edinburgh,
Mungo Buchannane in Tillie-	Robert Moriefoun, burges of	Patrik Colquhoun, alias Cowane,
chevin,	Dumbartane,	tailgeour in Edinburgh,
W ^m Buntene in Auchinfoule,		George Mitchel, flabler thair.

VERDICT. The Assyse, all in ane voce, ffind, pronuncet, and declairit the saidis Johne and Duncane to be ffylet, culpable, and convict of the crymes *respectiue* aboue writtin.—SENTENCE. To be tane to the Castell-hill of Ed^r, and thair, thair heidis to be strukin fra thair bodeyis ; and thair guidis to be efcheit and inbrocht to his Maiesteis vse, &c.

Suborning of Witnesses—Perjury.

JUN. 22.—ANDRO TRUMBLE in Belfches, Robert Ker in Bewlie, James Young in Belfches, and David Trumble in Lustruthir.

Dilaitit of Suborning of Witnesfes, and for beiring of ffalfe-witnesfing.

My lord Aduocat producet the Dittay, with ane Warrand direct to the Justice be the Lordis of Sesshoun, for putting the pannell to the tryell of ane Assyse, for the crymes spcifeit in thair Dittay.¹

ASSISA.

Gilbert Ker of Lochtour, Willame Ker of Lyntoun, Johne Glendonyng of Drumrasche, George Kincaid, mercheand in Edinburgh, Mr Thomas Ker, sone to the Guidman of Yair.²

My lord Aduocat takis instrumentis of the sueiring of the Assyse ; and for verificatioun of the Dittay, producet the Depositiones maid in presens of the Lordis of Sesshoun, subscriyuit be my Lord of Melrois,³ *in presentia Dominorum* ; And also, producet ane Decreit of the saidis Lordis, vnder the subscription of Mr Thomas Hay, clerk, daitit the xxij of Junij instant, ffinding and declairing the said Andro Trumble to be a periured and ffals man, and ane corrupter and seducer of Witnesfes to depone ffalslie ; and also, ffinding the saidis Robert Ker, James Young, and David Trumble, Witnesfes foirsaidis, seducet be the said Andro, to be in lyk maner perjuret and ffalfe Witnesfes ; in respect, thay first declairit be thair solemne aithes, that thai war nawayis seducet, be the said Andro Trumble, to beir ffals witnes in his cause of Spuilzie, persewit be him aganis Willame and Walter Mydilneftis ; and thaireftir, being mair straitlie and narrowlie examinat, confessit the verritie of the said seduction, and the ffalsset of thair Depositiones. And vpone the production thair of, askit instrumentis, and

¹ The Dittays are so extremely prolix and uninteresting, that it has not been deemed necessary to insert them here. ² The rest burgesses. ³ Sir Thomas Hammliton of Binning, &c. afterwards Earl of Hadington, Lord President of the College of Justice, &c. one of the greatest men of his time :

protestit for Wilfull Errour aganis the saidis persones of Assyse, gif thay acquit ; specialle, in respect of the pannellis offering thame in his Maiesteis will for the said crymes.

VERDICT. The Assyse, all in ane voce, be the repoint of Nicoll Edger, mercheand burges of Edinburghe, Chancellor, stand, pronuncet, and declairit the saidis Andro, Robert, James and David, to be ffylet, culpable, and convict.—

SENTENCE. The saidis *Andro Trumble*, *Robert Ker*, and *James Young*, to be tane to the Castell-hill of Edinburgh, and thair to be Hangit quhill thai be deid ; and thair haille moveabill guidis to be escheit to his Maiesteis vse.—And the said *David Trumble* to be tane to the Mercat-croce of Edinburghe, and thair his tounge to be pearcet with ane hett boitkyn ; and thaireftir Banischet this realme, and nocht (thaireftir) to be fund thairintill, vnder the pane of deid.

Assisors fined for being absent.

SIR WILLIAME McDUGALL of M'cairstoun, Sir Johnne Scott of Newburgh, Raulf Ker, bailzie of Lauder, Sir Robert Scott of Thirlstane, Williame Johnnestoun of Lockerbie, Williame Borthuik, elder of Johnnstoun-burne, Sir Archibald Murray of Blakbarrony, Mr Johnne Home of Swanscheill, James Fairbairne of West Gordonne, Johnne Elphinstoun of Schank, Alexander Cranstoun of Moriestoun, Johnne Cranstoun of Thornydykis, Sir Robert Scott of Hayneing, David Vause of Blaufe, Williame Home of Hardeismylne, Williame Bennet, fernetour to the Erle of Roxburgh, Johnne Symontoun, younger, of that ilk, Gilbert Ellote of Stobis, Robert Logane, ffeiar of Bonnytown, Mr Johnne Ker, clerk of Selkirk, Adame Gairdin, mercheand,—and twelve others, mercheands,—ilk ane of thame, for thair nocht compeirance, to pas vpone the said Assyse, war vnlawit in the pane of ane hundreth merkis.'

Taking captiue—Scourging—Slaughter, &c.

Jun. 26.—SIR WILLIAME KEYTH of Ludquhairne, kny^t, and Hew Charteris, his servand.

Dilaitit for allegit airt and pairt of the Taking and Apprehending of Alexander Pedder, myller at the mylne of Feachfeild, vnder nycht, furth of his duelling hous, mother-naikit as he was borne ; and for cayreing him, as ane captiue and prissoner, to the Place of Feachfeild, and breking vp of the zettis and durris of the said place ; scourging him with suord-beltis and horse-brydillis vp and down the hall thairof, to the effusioun of his bluid. AND siclyk, for allegit airt and pairt of the daith and Slauchter of vinq^{le} Andro Fraiser, ane young infant bairne, sone to Andro Fraiser, younger of Mukallis : AND for contraveining the Actis of Parliament, in beiring and weiring of hagbutis and pistolettis PERSEWARIS, Andro Fraiser, younger of Mukallis, as father ; Alexander Pedder, myller ; Sir Williame

Olipphant of Newtoun, kny^t, Aduocat to our fouerane lord, for his hienes entreis.

PRELOCUTOURIS in defence, Mr Thomas Hoip, Mr Roger Mowat.

Compeirit the said Sir Williame and his servand, togidder with the said prelocutouris, and exponet and declairit, that thai war informet, Criminall Letteris

war direct out aganis thame, vpone threfcoir dayis wairning, at the instance of Andro Frafer, &c. chargeing thame and certane vtheris¹ to find caution for thair personall compeirance this day and place, in the hour of caus, to vnderly the law for the above allegit crymes : For obedience of the quhilk charge of Hoirning, and tryell of thair innocencie of the saidis allegit crymes, the said Sir Williame Keyth, and Hew Chairteris, compeirit and offerit thame selffis of the Law, as altogidder innocent thairof. And in respect na pairtie compeiris to infist in thair perfute, being oft tymes callit to that effect, protestit for thair cautionneris relief, and that thai, na nane of thame on nawayis sould be callit or persewit for the saidis allegit crymes, in ony tyme cuming ; and thairupoun askit instrumentis.

Johnne Forbes, eldest sone and appeirand air to Mr Duncane Forbes of Bannagask, as cautioner and fouertie, for repoirting the above Letteris, deulie execute and indorsate, and persute thairof, &c., vnlawit vnder the panes following, viz. vpone the said Sir Williame Keyth, and Nathaniell Keyth of Coklaw, ilk ane of thame vnder the pane of v^e merkis ; and vpone ilk ane of the remanent defenderis, in the pane of ane hundreth merkis.

House-breaking—Theft.

Jul. 3.—ANDRO RUTHERFURD, suntyne servand to Mr James M^cGill of Cranstoun.

Dilaitit of airt and pairt of the breking of the said Mr James M^cgillis Place of Cranstoun, and breking vp of ane kist,² within the Woman-hous³ thairof, pertening to Malie Newlandis, and steilling xxx li. furth thairof ; committit in Majj last.

The pannell offerit him selff in the Kingis Maiestie and the Laird of Cranstones will, for the said cryme : Quhairvpone, the Justice ordanit him, of his awin consent, to be Banischet the parochin of Cranstoun ; and at na tyme heirefter to be fund thairintill, vnder the pane of deid. And ordanit him to find caution for his compeirance vpone fyftene dayis wairning, to vnderly the law for the said cryme, gif in ony tyme cuming he beis fund within the said parochin ; quha fund Thomas Rutherford in Borthiuk-manes caution for that effect.

Fire-raising—Slaughter.

Jul. 24.—DONALD M^cANGUS of Glengarie.

¹ There were ' Nathaniell Keyth of Coklaw, Williame Keyth, sone to Alex. Keyth of Bodome, Robert Marshell, Gilbert Wairdene, Gilbert Hucheoun, and Alexander Forbes, all feruitouris to the said Sir Williame ; Johnne Keyth, sone to Alex. Keyth, vnle to the said Sir Williame, George Keyth, callit *Caitnes*, George Johnne Dow M^cfarlane, Alexander Fordyce, and Thomas Murray, feruitouris to the said Nathaniell Keyth, vnle to the said Sir Williame.' ² Chest. ³ Probably that part of the Offices of Cranstoun, where the female domestics resided.

Dilaitit of the tressonable Raifing of ffyre, Burning of xxvij Houffes, with the inficht being thairin, pertening to Mr Johnne M^cKenzie, Archedeane of Rofs; and Slauchter of dyuerse his tennentis.

PERSEWAR, Mr Johnne M^cKenzie, Archedene of Rofs.

The persewar passis fra the pannellis persute *pro loco et tempore*, for the crymes contenit in the Letteris.

The pannell offeris him selff to the tryell of the law for the saidis crymes, as altogidder innocent; and disassentis to the said continuatioun. And for obedience of the Justice ordinance, fstand Sir Donald Gorme of Slait, kny^t, personallie present, cautione for his entrie, to the effect foirsaid.

Resetting of a Jesuit-Priest.

Aug. 6.—ANDRO HATHOWIE, burges of Glesgow, and Jonet Pollok, his spous.

Dilaitit of the tressonabill Recept of George Mortimer, ane Jesuite Preist, &c.¹

VERDICT. The Assyse, be pluralitie of voittis, be the repoint and declaratioun of George Moore of Powmadie, chancellor, fstand the saidis Andro and Jonet to be ffylet, culpable, and convict, &c.—SENTENCE. The Justice, conforme to ane Warrant of the Lordis of his Maiesteis Secreit Counfall, decernis and ordanis the saidis *Andro* and *Jonet* to be Banischet furth of this kingdome of Scotland, during all the dayis of thair lyftymes: And to be committit to waird, thairin to remane, quhill cautioun be fund to the Proveist and Bailleis of Glesgow, for obedience of the said dome, and thair nocht returning agane; vnder sic panes, as fall be set down be the saidis Proveist and Bailleis, in thair Act to be maid thairupoun.

[*Mr Robert Fairlie, Justice-Depute.*]

Theft.

Sep. 20.—HENRIE KYNLOCHE, sumtyme post-maister, indueller in the Cannogait.

Dilaitit of the thiftious steilling of ane blak cloik, lynet throw with blak veluet, ane grograne taffitie cloik, lynet with figuret satene, and tua pair silk schankis, pertening to Alexander Lord of Kildrymmie, furth of his Place, at the bak of the Palice of Halyruidhous; committit in November 1621 lastbypast.

The pannell confessis the cryme specifeit in his Dittay, with all humilitie: Seing the guidis stowin ar restorit to the rychteous owner thairof, offeris him selff in the Kingis Maiestie and his lienes Counfellis will, for the said cryme.

WARRANT of the Lordis of Secreit Counfall.

APUD HALYRUDHOUS, *decimo quinto mensis Maij*, 1622. FORSAMEKILL AS Henrie Kinloche, sumtyme post-maister in the Cannogait, being tane and put in waird, within the Tolbuthe of the Canno-

¹ The Dittay, which is recorded at length, is similar to those already reported.

gait, quhairin he presentlie remanis, ffor certane poyntis of Thift committit be him: Off the quhilkis, necessar it is that he be tryed, and that some pwneischment be inflictit vpon him, to the terrour of vtheris to offend in the lyk heireftir. Thairfoir, the Lordis of Secreit Counfall Ordanis his Maiesteis Justice, Justice-clark, and thair deputis, to appoint ane Justice Court to be haldin in the Tolbuthe of Edinburgh, at suche ane day as thay sall think expedient; and to caus the said Henrie to be exhibit and producet befor thame; and thair to accuse him of the said cryme of Thift, according to the per-ticuler Dittay, that sall be gevin in aganis him. And Ordanis his Maiesteis Aduocat to insist in the persute of him; and gif the said Henrie sall confes the said cryme, and become in his Maiesteis will for the same, that than thay pronunce dome and sentence aganis him, ordaning him to be Banist the realmes of Scotland and Ingland, and nevir to returne agane within the samyn during his lyfytyme, vnder the pane of deid.

Extractum, &c.

JACOBUS PRYMOIS.

SENTENCE was pronounced in conformity to this Warrant.

'Rapt and Ravishing'—(Forcible Abduction)—Adultery.

[THE following brief notice of an ancient *Crim. con.* Case, affords a specimen of the mode in which affairs of gallantry were managed in the Western Islands and Highlands of Scotland. Sir LAUCHLAN MCFINGANE (MACKINNON) of Strathardill, having fallen in fancy with *Mary McConnell (MacDonald)*, the wife of *Ranald of Benbecula*, makes the best use of his winning arts, and carries off the lady, by violence, from her husband. It would appear, from the charge of Adultery being also preferred against this knight errant, that the consent of the lady had in all probability been previously obtained to the arrangement. *Ranald McAllan VcEan*, the injured husband, was brother to *Donald McAllan McEan*, CAPTAIN OF CLANRANALD, and grandfather of *Donald MacDonald of Benbecula*, who became Captain of Clanranald, anno 1725. This gay and *captivating* deceiver, Sir Lauchlan, was one of several Hebridian Chiefs, who had been knighted by KING JAMES VI, in the latter part of his reign, to ensure their more ready acquiescence in the schemes so zealously projected by him, for the civilization of their semi-barbarous tribes. A Gift of his Escheat was granted by the King, Dec. 12, 1622.¹

The Editor begs to refer the reader to the forthcoming work of Mr GREGORY, already alluded to, for more copious illustrations of matters connected with the Hebrides and West Highlands.]

NOV. 8.—SIR LAUCHLANE MCFINGANE of Strathardill, kny^t.

Dilaitit of the Rapt and Raveischeing of Marie Mcconneill, sifter to Sir Donald Mcconneill of Slait, and spouse to Rannald Mcallane Vcane of Casteltwirrie;² committing Adulterie with hir, and remanent crymes contenit in the Letteris.

James Logie, wryter, producet the Letteris deulie execute, indorsate, and regiftrat; quhairby the said Sir Lauchlane is denuncet rebell, and put to the horne, for nocht finding of cautoun, to haif compeirit to haif vnderlyne the law.

Slaughter.

MAR. 12, 1623.—WILLIAME OLIPHANT of Gask, and Alexander Flemmyng of Monnefs.³

Dilaitit of airt and pairt of the Slauchter of vmquhile David Toscheoch of Monyvaird.⁴

¹ See Record of the *Privy Seal* and *History of the Macdonalds*.

² Castletirrim.

³ Peter

Oliphant of Rescobie, and Johnne Erle of Wigteun, cautioners for the pannels' entry.

⁴ See Jul.

29, 1618, &c.

Compeirit Mr James Campbell, sone to the Laird of Laweris, for him selff, and in name and behalf of the remanent kyn and freindis¹ of the said vmq^{le} David, and in name of Annas Grahame, Lady Monyvaird, and past fra the said Williame Oliphant of Gask his persute, *pro loco et tempore*.

Compeirit personallie, Mr Johnne Oliphant, as procuratour for Williame Oliphant of Gask, and producet ane Warrant and delyuerance of the Lordis of Secreit Counsall, commanding the Justice to desert the dyet appointit this day for the said Williame Oliphant; quhair of the tennour followis.

WARRANT of the *Secret Counsell, concerning Williame Oliphant of Gask, for Monyvairdis Slauchter.*

MY LORDIS OF SECREIT COUNSALL, vnto your ll.² humble meanis and schawis, I, your seruitour, *Williame Oliphant of Gask*: That quhair, I am charget to compeir befor his Maiesteis Justice, in the Tolbuth of Edinburghe, vpon pe xij day of Marche instant, to vnderly the Law for the Slauchter of vmq^{le} *David Toscheoche of Monyvaird*, and vtheris crymes speifeit in the Letteris raised thairupoun. Lyk as, pe Justice intendis to proceed aganis me in that matter, albeit it be of veritie that HIS MAIESTIE, being treulie informet of the forme and maner how that unhappie Slauchter fell out, and how that dyuerse come to pe ffray quho war bothe ignorant and innocent of the Slauchter, and wald haif bene lothe to haif bene actoris thairin, or to haif medlit thairwith; HIS MAIESTIE was pairupoun graciousslie pleisit, by his Letteris writtin and direct to your Lo., to recommend to your Lo. the settling of that ffeid³ by some amicable and freindlie dresse, and by making of suche Assythement⁴ and satisfioun, as convenientlie may be performed: AND in the meane tyme, it was his Maiesteis expres will, and speciall command, and direction vnto your ll., that all proces Criminall and Ciuill aganis me, for that caus, sould rest and ceis, till some generall course war concludit vpon and tane in that matter: As his Maiesteis Letter, exhibeit vnto your ll. in the sex hundreth and nyntene 3eir of God beiris. ACCOIRING quhairvnto, your Lo. hes nocht onlie gevin Warrant to desert findrie dyettis, quhilkis formerlie war appointit for my tryell in this matter, bot with that your ll. tooke verrie grit panes, in tua or thre feuerall dyetis, to haif settled this ffeid, and caused wairne ane grit number of *Monyvairdis* speciall freindis to that effect: And at pir dyettis your ll. causit satisfioun to be maid to *Duncane Campbell* and *David Malloche*, who war bothe deidlie hurte and woundit at the slauchter of *Monyvaird*, the on haiveing his hand cut aff, and pe vther being deidlie woundit in the heil; bot anent pe satisfioun for *Monyvairdis* Slauchter, whairin thair was verrie honorable Offeris maid; the same was cassin af, be refone of *Young Monyvairdis* minoritie, his freindis in the mean tyme refusing to medle pairin, or to tak burding for him; sua that pe nocht settling of this bussines proceedis nocht frome the default or vnwillingnes of the offenderis, quho in heart and affection wold do mair nor goodlie thay may in pat matter, bot frome the refusall of *Monyvairdis* freindis to deale thairin, during his minoritie. IN consideratioun quhair of, I man⁵ maist humlie beseik your ll. to geve command to pe Justice, Justice clerk, and pair deputtis to desert pe said dyet, and to desist and ceise fra all proceeding aganis me or my cautioneris pairintill; dischargeing thame pair of, and of pair offices in that pairt, till some generall course be takin for pe finall settling of that ffead. And your ll. ansuer. (Followis pe delyuerance on the bak pair of.)

APUD EDINBURGHE, xj Marcij, 1623. FIAT ut petitur,

GEO. CANCELL^r. MAR. MOIRTOUN. WIGTOUN. ROXBURGH. MELROIS.

LAUDERDAILL. R. COKBURNE. ALL. HAMMILTOUN. J. PRYMROIS.

THE Justice, for obedience of the said Warrant, and command thairin, Ordanit

¹ Blood-relations.

² Lordships.

³ Feud.

⁴ Compensation or *solatium* paid to the deceased's nearest of kin, on account of being deprived of their relation.

⁵ Must.

the said dyet to DESERT aganis the said *Williame Oliphant*: AND of consent of the said Mr James Campbell, continewis the dyet aganis *Alexander Flemyng of Monneſs*, to ane fyftene dayis wairning; and caution to be fund be him for his entrie to that effect.

Johnne Erle of Wigtoun of new becomes caution to for the said Alexander, to enter him befor his Maieſteis Juſtice or his deputis, the thrid day of the nixt Juſtice-air of the ſcherefdom quhair he duellis, (Perthe,) or ſoner, vpon xv dayis wairning, &c.

Slaughter.

JUN. 4.—THOMAS GOWDIE, mercheand, burges of Dumfreis.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Harbert M^ckie, younger, in Dumfreis; committit vpon the laſt day of December laſtbypaſt; be geving to the ſaid vmq^{le} Harbert M^ckie, at the Brig-end of Dumfreis, of ane grit and deidlie ſtraik, with his fute, in the ſaid vmq^{le} Harbert his ſecreit pairtis; ane vther, at the left pape, vpon the heart; and ane thrid, on his left ſchoulder, quhairby his ſchoulder-bayne was ſtrukin out of joynt: Off the quhilkis ſtraikis he nevir convaleſſet, bot being instantlie borne hame to his hous, tuik bed; quhairin he lay bedfaſt, in grit dollour and payne, of the ſaidis hurtis, vnder the cure of chirurganes, be the ſpace of tuentie dayis thaireftir; and, in end, vpon the xxvj of Januar thaireftir, now bypaſt, he deceiſſit of the ſaidis hurtis and woundis.

PERSEWARIS.

Katharene Edſer, relict;
Agnes Maxwall, mother;
Eduard and Johnne M^ckie, his
tua brether.

PRELOCUTOUR

for the perſewaris.
Johnne Maxwall of
Conhaithe.

PRELOCUTOURIS

in defence.
Mr Lueis Stewart,
Mr Thomas Nicolſoun,
younger, Advocattis.

The pannell, eftir reiding of the Dittay, to informe the Juſtice of the ſecreit proceedingis of thir perſewaris, and how malicioſlie thai proceid aganis him, declairis, that thair was nevir querrell nor diſcoird betuix him and vmq^{le} Harbert M^ckie, for quhais ſlauchter he is wranguſlie and injuſtlie perſewit; bot as the treuth is, ane contraverſie falling out betuix ane Thomas Craik and the pannell, in craveing of ane ſowme of money addetit be Craik to him, and ſum woirdis and dry cuſſis¹ being gevin be ather of thame to vther, the Bailſie of the Regalitie of Lyncluden, viz. Johnne Maxwall, brother to Kirkconnell, within quhais Regalitie the contraverſie fell out, for putting the pairteis to quyetnes, commandit thame to waird, quhill caution war fund for keiping his Maieſteis peace; quhairvpon, the ſaid vmq^{le} Harbert M^ckie, with ane number that aſſiſtit him, laid handis vpon the pannell, brocht him, with grit violence, to the Waird-

¹ Dry blows, *i. e.* upon which no blood had followed; fiſty-cuſſis.

hous, pat him in the stokis; and becaus the buittis that was than vpone his legis wald nocht, convenientlie, be stowit and placet within the hoillis of the stokis, thai maist insolentlie strak him vpone his bak, dung down the over¹ bar of the stokis, and dancet thairupoun with thair feit and kneis, as also vpone his breist and bellie, quhairthrow he was almost confoundit in that painful agony. And quhair, in the Dittay, it is allegit, that thair wes straikis gevin to the said vmq^{le} Harbert, quhairof he deceissit; the verritie thair of is, that ane yeir or thairby, of befoir, he being strukin in at the left pape be ane Ahannay, with ane durk, a sevin inches or thairby, with grit difficultie was than curet, bot never fullilie convalescit; sua that the corruptioun² gadding within the wound, raisit vpone him ane new fever, quhairof he deceissit; as is sufficientlie knawin to the haill cuntry. Lyk as, it was declairit be the said vmq^{le} Harbert to dyuerse inhabitantis of the said burgh of Dumfreis, that, lang befoir that contraverfie of the pannellis, he was strukin in the secreit pairtis, quhilk he ever declairit would be his deid. And sa, the premisses being considerit, the said persute is maist wrangullie inventit, and vpone greid of geir to be obtenit of this pannell be thir schameles persewaris; and, vnder cullour of justice, thay haif followit furth this persute aganis him, albeit the defunct him self, in presens of his chirurgane and vtheris, cleirlye absoluit and fred the pannell of all persute done to him.—Quhilk being premitit,³ for informatioun, it is allegit be the pannell and his prelocutouris, that this Dittay can nocht pas to ane Assyse, becaus the said vmq^{le} Harbert M'kie, the persone allegit slane, the tyme lybellit of his slauchter, was rebell and at his Maiesteis horne, for ane criminall cause, viz. ffor nocht compeirance befoir his Maiesteis Commisioneris within the Tolbuthe of Jedburgh, vpone the tuenitie sevint day of Apryle, 1^m. Vj^c. and nyntene yeiris, in ane Justice court, haldin be thame the saidis day and place, to haif vnderlyne the law for beiring and weiring of hagbuttis and pistolettis, and contravening the Actis of Parliament maid thair-
anent. And for verificatioun thair of, producet the Letteris of Hoirning, &c.

Continued to the thrid day of the nixt Justice-air of Dumfreis, &c.—The said Thomas Goudie, defender, be his aithe gevin, declairit that he dred⁴ bodelic harme of the said Eduard M'kie, ane of his persewaris; and thairfoir desyret caution and lauborreis of him, conforme to the ordour, vnder sic pane as his lordschip shuld pleis modifie. Johnne Maxwell of Conhathie become souertie, &c., vnder the pane of ffyve hundreth merkis money, *tolies quoties*.

Slaughter of two MacFarlanes—Barbarous Torture and savage Murder of a Buchanan by some of the Clan MacFarlane.

[In the whole range of the Criminal Records of this country, remarkable though they unquestion-

¹ Upper.

² Purulent or corrupted matter.

³ Premised.

⁴ Dreaded.

ably are, the Editor believes it would be difficult to point out a Case possessing incidents of such varied and frightful interest, as those brought forward, so prominently, in the following Trial. It is not his intention, in this place, to recapitulate the leading facts of the present truly horrible Case. He has not been able to throw much additional light upon the facts recorded in the Books of Adjournal from contemporary documents. All that he at present deems worthy of remark is, that *tradition* has preserved pretty accurate outlines of the general features of this 'Romance of real life' in the district where they occurred—an additional proof, were such requisite, of the fidelity with which historical and extraordinary events are handed down, from father to son, in THE HIGHLANDS OF SCOTLAND.

The only Paper which the Editor has discovered, illustrative of the other side of the question, is the 'SUPPLICATION,' preserved among the Warrants of PRIVY COUNCIL, which is appended to this Trial. That document is given here as an act of common fairness to the CLAN MACFARLANE. The reader is left to draw his own conclusions as to the relative demerits and guilt of the several parties.]

JUN. 6.—GEORGE BUCHANANE, in Gartincaber; Johnne B., his sone; Patrik B., sone to George B. of Archinar (Auchmar); Patrik M^cwreift, his fervand; Johnne Beg Buchannane, in Ballindewar; Johnne B., his sone; Johnne Keir, in Gartnalinch;¹ Thomas Buchannane, in Drongie; and Archibald B., his brother.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Duncane M^cfarlane, sone to Andro Moir M^cfarlane, in Voneffene; committit vpon the faxt day of Apryle last, within the toun of Kippienochie, in Drummond, in the Lennox.

PERSEWARIS.	PRELOCUTOURIS	PRELOCUTOURIS
Robert and Thomas M ^c farlane,	for the perfewaris.	for the pannell.
as brether;	The Young Laird of M ^c farlane;	Alexander Douglas of Maynes;
Sir Williame Oliphant, kny ^t .	Mr David Prymrois.	Mr Robert Nairne.

Compeirit the said Robert M^cfarlane, &c., and producet the criminal letteris, deulie execute and indorfate, vpon the haill perfonas defenderis aboue writtin; and offerit thame selfis reddie to perfew the defenderis for the said cryme, and defyret proces.

The said Alexander Douglas of Maynes, cautioner for the entrie of the haill defenderis, with Mr Robert Nairne, Aduocat, producet ane WARRAND and command to the Justice, proceeding vpon the following

SUPPLICATIOUN, *gevin into the Lordis of Secreit Counfall, be the foirfauidis haill defenderis, and in their names.*

MY LORDIS OF SECREIT COUNSALL, vnto your Lo. humlie meanis and schawis WE, your feruitouris, PATRIK BUCHANNANE, appeirand of Auchmar; George Buchannane, in Gartincaber; Johnne Buchannane, his sone; Johnne Buchannane, in Ballindorne; Johnne Buchannane, his sone; Thomas Buchannane, sone to vmq^{le} Williame Buchannane, in Blairneborg; Archibald Buchannane, his broper; Donald Keir, in Gartnahinche; and M^ccaula, ferui-

¹ Perhaps for Gartranich, or Gartrahnich.

tour to the said Patrik Buchannane: THAT quhair, the saxt day of Junij instant is appointit vnto ws for our compeirance befor the Justice or his deputtis, in the Tolbuth of Edin', to vnderly the law for the Slauchter of vmq^{le} Duncane M^cfarlane, sone to vmq^{le} Andro Moir M^cfarlane, in Kipnoche: Lyk as, the Justice intendis to proceid aganis ws in the said matter, althoght it be of verritie, that gif ȝour ll. war informed of þe certane treuth of this bußines, how and vpone quhat grund and occasioun the Slauchter fell out, and quhat just caus of wraith and displeasour was gevin to vs thairin, we persuaid our selffis that ȝour lo., in honnour and justice, wald nocht think this persute to mereit ony fauour: FOR the treuth is, that þe said vmq^{le} *Andro Moir M^cfarlane*, quho, during the whole cours of his vnhappie lyfe, was knowin to be ane notorious theif and lymner, haifing stowin sum goodis frome certane of his Maiesteis guid subiectis in THE LENNOX, some foure or fyve ȝeiris since, or pairby; and þe said vmq^{le} *Williame Buchannane*, out of his trew haitrent and detestatioun of siche thevische doingis, haifing maid some inquierie, and having tane panes and travell to speir out and try the goodis, in end, he tryed the goodis to be stowin be the said vmq^{le} *Andro Moir M^cfarlane*, who, by cours of Justice, was constraned to mak redres and satisfacioun for the same: AND the said vmq^{le} *Andro*, haifing confauet ane deidlie haitrent and malice aganis þe said vmq^{le} *Williame* for speiring¹ of thir goodis, he resolued, out of the pryde and malice of his wikked heart, to be revenged vpone him, eftir þe most detestable and crewall maner that the heart of him could devyse: And knowing that the Gentilman was accusomed at some tymes, for his recreatioun and pastyme, to go to þe hunting, in þe Mure aboue the Ducher, he maid chose and took hold of that occasioun to do his turne; and haueing, be some previe moyane, bene maid acquentit with þe Gentilmannis dyet for his pastyme, he, accompaneit with his tuo sones, and sewin or aucht vtheris lawles lymnaris,² come to the said Mure, and lay at await for the Gentilman; and howsone he come pair, about aucht of þe cloke in þe moirning, without ony company bot foure hunting doggis, thay layed handis vpone him and band him fast, that he mycht not steir; and haifing consultit amang thame selfis, eftir quhat forme and maner thay sould dispathe him, thay resolued, in end, that his presumption and malapeartnes to speir out þe saidis goodis deserued ane extraordiner deathe, by torture; quhilk thay maid him to vnderly, the space of ten houris, in maner following, to wit: Thay band him fast to ane trie, at the said hour of aucht in the moirning; and everie hour thaireftir, till sax at nicht, quhilk maid vp ten houris, thay gaif him thre crewall straikis with ane durk, in siche pairtis of his body as war nocht to bring present daithe; and haifing this way maggillit him with threttie straikis, till þe full number of

¹ Enquiring; searching after.² Thieves; worthless characters.

ten houris war outrwn, thay than gaif him þe laſt deidlie ſtraik, at the heart; quhairwith he fell deid to the ground! And haifing tirred¹ him naiked, becaus his towng was the instrument quhairby, as thay alleged, he offendit, in ſpeiring out of þe former ſtowin goodis, thay cuttit his throte, tooke his toung out of his heid, flew his foure dogis, cuttit ane of thair toungis out, and pat it in the Gentilman his mouthe; and pat his toung in the dogis mouthe: And nocht content heirwith, bot the forther to ſatisfie pair inhuman and barbarous crewaltie vpone the naked corpis, thay ſlitt vp his bellie, tooke out his whole intrallis, and pat thame in ane of the dogis belleis, eftir thay had opnit the dogis bellie and tane out his intrallis, quhilkis thay pat in þe Gentilmannis bellie: And ſo left him lyand naked, and the foure deid dogis aboue him; quhair he lay aboue the eard the ſpace of aucht dayis thaireftir, or² he was found: FOR the quhilk deteftabill boutcherie and Murthour, thir lymmeris being callit to thair tryell, befor his Maieſteis Juſtice, thay tuik the cryme vpone thame, and paſt to the horne; quhairat the ſaid *Andro* remainit till þe hour of his deathe, and the reſt of his complices remanis pairat as ȝit: Aganis quhome ȝour Lo. paſt ane ampill Commiſſioun, for þe perſute of thame with ffyre and ſuord. AND quhair as, this deteftable and moir than barbarous Murthour ſould haif bred, in the heart and conſcience of thois lymmeris, ſome remorſe and fealling of this ſyn, and ane abſtinance and forbearance frome all forder impietie, ȝit þe ſaid *Andro* continewit in his accuſtomet theviſche trade of Thift, Reaffe, and Oppreſſioun, and could nevir be reclaimed pairfra, till the hour of his deathe: AND, for his laſt Thift, he, a littill befor his deathe, ſtaw an ox fra me, the ſaid *George Buchannane*, and cayreid the ſamyn to ane Houſe in,³ quhair he and his wyfe hes thair ordiner reſlett; and how-ſone we vnderſtuid of the ſteilling of the ox, we followed the tred⁴ directlie toward the ſaid houſe; and haifing ſend for the *Erle of Pearth*⁵ his Officer, to aſſiſt ws in rypeing⁶ of the Houſſes pairabout, the lymmar and his ſaid ſone, being in the Houſe foirſaid, and pair guiltie conſcience ſtanding vp aganis thame, as ane burreaw⁷ to tak vengeance of thame, thay diſguiſet þame ſelffis in weamenis apparell, and preiſt⁸ to flie away; whilk being perſaued be ws, and we thinking that thay keipit nocht þe ordiner paiſe of wemen, and ȝitt nawayis ſuſpecting that thay war the lymmaris, we followit, in a ſoft pace, to remark quhat courſe thay held; and the ſaid *Duncane Mcfarlane*, lūiking over his ſchoulder, and ſeing ws follow, he turnes about, and preſentit ane lang hagbute at ws; quhilk being fyred, by the Prouidence of God, miſgaue: And with that, he and his father drew pair ſuordis, and come dryveand

¹ Violently ſtripped, by tearing off the clothes. ² Ere; before. ³ Left blank. ⁴ Tread; foot-marks—probably by means of the *ſleuth-hound*, or blood-hound. ⁵ As Lord of the Regality, whoſe Bailie would, upon application, grant warrant to ſearch, &c. ⁶ Searching. ⁷ Fr. *boureur*, a hangman; an executioner. ⁸ *Pressed*; made every effort.

vpone ws with all pair force ; and or evir we preift to perfew thame, thay gaif me, the said *George*, ane deidlie ftraik, whairat thay ftrak me deid¹ to the grund, and in the opinioun of the rest of my companie I was a deid man ; and thay hurt and woundit vther thre of ws : And sua, we finding no longer tyme, with furetie, to be beholdaris and sufferaris, we tuik ws to our iust and lauchfull defence, quhairin the vnhappie lymmer was worthielie flane, and his sone, who vnhappielie was in companie with him, and who maid the first onfet with his hacquebut or euir we knew quhat he was, was lykwayis killed ; the fader being rebell and at the horne for þe Murthour foirsaid, and he and his quhole bairnis being þe most notorious lymmeris of that Clan. AND howeuir it may be obietit, for þe pairt of þe young man, that he was nocht acceffour to þe Murthour foirsaid, and that he sould nocht be pwneift for his fatheris deid, it is of treuth that continewallie sen þe fader was rebell for the Murthour foirsaid, the said Duncane, his sone, remanit and attendit vpone him, was airt and pairt with him in all his thevische and wicked deidis ; and in affisting and taking pairt with his fader aganis ws, in our iust and lauchfull defence, was flane : At quhose lyke-walk, that nycht, the ox foirsaid, stowin be þe fader and þe sone, was flane and eittin.

THIS being the trew and simple discourfe of all that hes past in this buflines, We humblie present the samyn to your Lo. confideratioun, quhairby your Lo. may perfaue how mischantlie² and barbaruslie the innocent and hermeles Gentilman was mordreift and flane, and quhilk was þe ground and occasioun of the succeding slauchteris ; quhairin, becaus pair is grit appeirance of disorder to arryfe, to the disturbance and brek of þe peace of þe countrey, seing THE CLAN-FARLANE gois about pair privat revenge, and our freindis [THE BUCHANANS] on þe vper pairt, will be cairfull of pair awin defence : We will humlie beseik your Lo. to tak suche courfe and ordour heiranent, as your Lo. sall think fitteft for the peace of þe Countrey ; and we, for our pairtis, will be willing to vnderly quhateuir your Lo., in honnour and iustice, sall preseryve to ws. And becaus this can nocht be done vpone the suddane, bot will requyre some tyme and labour to be tane ordour with and satled ; We most humlie beseik your Lordschipis to geve command to þe Justice, Justice-Clerk, and pair deputis, to DESERT þe said dyet, and to desist and ceis fra all proceiding aganis ws thairin, or calling of our cautioneris for our entrie ; dischargeing thame pairof, and of pair offices in that pairt : Quhairanent þir presentis sall be pair Warrant.

AND your Lordschipis humlie I beseik.

ORDINANCE of the Lordis of Secreit Counsell, on the above Supplication.

APUD *Halyrudhous*, quinto Junij, 1623. THE LORDIS Ordanis and commandis the Justice, Justice Clerk, and pair deputis, to continew the dyet within writtin to þe xiiij day of Junij instant :

¹ Insensible ; in a dead swoon.

² Old Fr. *meschantement*, wickedly.

And Ordanis thir complineris to mak OFFERIS to the pairtie, and to present the Offeris to þe 3OUNG LAIRD of M^cFARLANE, yf he be in the toun, and to þe speciall freindis attending this dyet, quhome the saidis Lordis Ordanis to remane in this toun of Edinburghe till some ordour be tane for satling of the matter within writtin, and for the peace and quyetnes of þe Countrey. And Ordanis the Justice to dispens with the personall compeirance of þe pairtie, vpone new caution, conforme to þe ordour.

GEO. CANCELL^s, I. P. D.

And thairwith also producet OFFERIS, in writt, conforme to the Ordinance aboue writtin ; quhilk was presentit be *the Young Laird of Buchannane* to the Justice, to be delyuerit to *the Young Laird of M^cFarlane*, also personallie present.

THE JUSTICE, for obedience of the Counfallis ordinance, Continewis the dyet to the xiiij *instantis* : And Ordanit the persewaris to confidder vpone the Offeris in the meane tyme : And siclyk Ordanis cautionn to be fund for the haill defenderis re-entrie that day, vnder the panes contenit in the Actis of Parliament.

Mr David Prymrois protestit, that this Warrant, and Offeris presentit this day, nawayis prejudge the persewaris of thair lauchfull persute, for the slauchter of thair freind and kinsman.

The Laird of Maynes become cautionn for re-entrie of the haill defenderis, contanit in the Letteris, the day foirsaid, &c.

JUN. 14.—COMPEIRIT personallie, THE LAIRD OF M^cFARLANE, ELDER, as CHEIFF to the persewaris, and desyret proces on the ane pairt ; and on the vther pairt, Compeirit Alexander Douglas of Maynes, as cautioner for the defenderis entrie this day, and producet,

WARRANT of the Lordis of Secreit Counfall, &c.

MY Lordis of Secreit Counfell, vnto 3our Lordschipis humlie meanis² and schawis I, 3our seruitour, George Buchannane, appeirand of that Ilk : That quhair, for obedience of 3our Lordschipis ordinance, I, in name of my freindis quho war callit for the slauchter of vmq^{le} Duncane M^cFarlane, haif maid Offeris to the pairtie ; quhairin I haif offerit, that thay, or I, in pair names, fall submit thame selfis to þe ERLES of MAR, MENTEITH, WIGTOUN, and LINLITHGOW : As þe coppie of my Offeris, heirwith producet, beiris. Whairanent, as 3itt, thay haif r^eturmet no anfu^r ; sua that it appeiris my Offeris ar reiectit. And gif 3our Lordschipis fall nocht find thir Offeris to be sufficient, I, in pair names, offeris to caus thame submit all thair differences to 3our lordschipis, and to do thairin as 3our lordschipis fall think meitt. Heirfoir, I beseik 3our ll. to confidder of thir Offeris, and to do thairin as 3our ll. fall think meit for þe peace of þe cuntrey. And becaus the matter can nocht be presentlie settled and put to ane poynt, that 3our lps. will geve a new Warrant to the Justice, Justice-clerk, and pair deputis, to continew þe dyet appointit to my freindis for pair tryell befoir thame, vnto suchie reffonabill day as 3our lps. pleissis. And 3our lps. anfu^r.

APUD Halvudhous, *duodecimo Junij*, 1623. THE LORDIS OF SECREIT COUNSALL Ordanis and Commandis the Justice, Justice-clerk, and pair deputis, to proceed and minister justice in þe matter within written, aganis Johnne Buchannane, sone to *Johnne Beg*, and *Archibald Buchannane*, sone to vmq^{le} *William Dow*. And to Desert þe dyet for þe remanent persones charget to compeir to vnderly þe Law for þe Slauchter within writtin : Quhairanent þir presentis fall be vnto þe said Justice, Justice-clerk, and pair deputis, a sufficient Warrant.

GEO. CANCELL.

¹ In presentia dominorum (Secreti Consilij.)

² Complains ; literally, *moans*, or *bemoans*.

THE Justice Ordanis THE DYET TO DESERT vpon the haill defenderis infert in the Letteris, except as above; and iustice to be profecute and followit furth aganis thame, conforme to the ordour. And Ordanit the said Alexander Douglas, as cautioner foirfaid, to be vnlawit for nocht entrie of the saidis Johnne and Archibald Buchannanes, in the pane of ane hundreth merkis for ather of thame. And siclyke, that the saidis Johnne and Archibald fall be denuncet our fouerane lordis rebellis, and put to the horne; and all thair moveable guidis to be efcheit, &c.

APPENDIX TO THE PRECEDING TRIAL.

SUPPLICATION *by the Kin and Friends of vmq^{le} Duncane M^{ac}Farlane to* THE LORDS OF PRIVY COUNCIL.¹

MY LORDIS OF SECREIT COUNSELL, vnto yo^r lo^{ps} humelie menis and schawis we, yo^r feruitouris, the KIN and FREINDIS² of vmquhile DUNCANE M^cFARLANE, sone to vmquhile Andro M^cFarlane, in Kipnoche: THAT quhair, the said vmquhile Duncane, a young boy of the aige of xvj yeiris, or thairby, being most shamefullie and cruellie slayne be certane of THE NAME OF BUQUHANNANE, vponett purpois, prouisioun, and foirthocht fellouny; we, foirbearring to atone priuie revenge, and in most submissiue obedience to HIS MAIESTIE and his Lawis, haueing resolued, be the ordinar course of iustice, to follow out the tryall of that slauchter; we, for this effect, raised Letteris, and charged the Criminallis to thair tryall befor HIS MAIESTEIS Justice, vpoun the fact of this instant: At the quhilk day, we, lookeing that the course of iustice sould haif had place, conforme to the Lawis of the Kingdome, notwithstanding, it is trewth, that yo^r lo^{ps}, vpoun the sinister and wrong information of the pairtie, concerning the slauchter of vmquhile WILLIAME DOW BUQUHANNANE, w^{lk} thay aggregreit³ with fuche circumstances, and after fuche a detestable maner, as might mak we, who ar innocent, to feame odious.

AND towcheing the occasions of the slauchter of the young boy and of his fader, and of the forme and maner thair of, grantit ane WARRANT for continewatioun of our dyet, till the xiiij of this instant; by the quhilk, not onlie we, bot the Gentlemen of the Cuntrie, who ar summoned vpoun the Assise, ar verie far preiudgen and troublit, and the course of iustice is interruptit and hinderit; and we persuaude oure selfis that yo^r lo^{ps} in yo^r awne honourable regaird and dispositioun to iustice, wald neuir haue grantit fuche ane Warrant, yf yo^r lo^{ps} had bene treulie informed anent the slaughtair of the innocent and harmles young boy; ffor althoght we will not prease to extenuat the slauchter of vmquhile *Williame Dow*, who, to our regrait, wes mischeantlie⁴ and vnworthelie slayne, yitt we may treulie afferme vnto yo^r lo^{ps}, that anent the forme, maner, and circumstanceis of the slauchter, as is punctuallie sett down in THE PETITION givin in to yo^r lo^{ps}; and anent the forme, maner, and occasionis of the slauchter of the young boy and his fader, as is lykwayes sett down in the Petitioun, and q^{lk} wes the ground whervpoun yo^r lo^{ps} wer moved to grant the said continewatioun, the pairty hes verie far ouersene thame selfis, and past the boundis of modestie; and hes abusyd yo^r lo^{ps} with thair sinister and wrong information; quhilk, yf thay be able to iustife and mak good, as thay haif sett down in the Petitioun, first, anent the maner of the slaughtair of *Williame Dow*, and how that the slaughtair of the boy proceedit vpoun occasioun of thair following of ane stollin ox, quhilk thay alledgedit in thair BILL⁵ wes stollin be the said Andro, and eattin at his lykewalk;⁶ and that the boy, assisting his fader, presentit ane hagbute, w^{lk} misgaif, and thairefter concurring w^t his fader in persute of the *Buquhannanis* wes slayne;

¹ From the Original, preserved among the Warrants of Secret Council, General Register House, Edinburgh.

² Blood-relations.

³ Aggravated.

⁴ Wickedly; O. Fr. *meschantement*.

⁵ Bill of Supplication.

⁶ See this Trial, p. 549.

we ar content, without forder ceremonie, to tak the pairtie be the hand,¹ and to renunce o^r Criminnall perfute againes thame: ffor the treuthe is, that thay come to the boyis houe, quhairof he wes tennent to the *Erle of Perth*, vpoun sett purpois and provisioun; and the boy, apprehending his danger, after he hard the thoute raifed be thame, he fled for faultie of his lyffe; whome thay followit ane lang way; and haueing ouertane him, and he being thair prifoner, thay brocht him bak half ane myle, and in cauld bloode, cruellie and barbaroullie flew and manglit him, but² pitie or compaffioun, with xviij deadlie woundis, with durkis; and haueing caffin him on his bellie, quhair he lay deade vpoun the ground, thay, the forder to fatisfie thair raige vpoun the poore corps,³ cuttit his bak in tua with fwerdis.

This is the simple trewth of the busfynes, w^{lk} we will stand to: And thairfoir, we will humblie befeike y^r lo^{ps} to caus thair Petitioun to be exhibite be the saidis personis befoir yo^r lo^{ps}, to the intent the trewth of the circumstanceis of the slaughteris, as thay ar fett down in the said Petitioun, may be examined be yo^r lo^{ps}, and ordour tane thairin accordinglie. AND seeing, we haif, in all modestie, and w^t grite patience, as humble and deuitfull fubiectis [to HIS MA^{TIE}] socht the benefeit of his Lawis, We humelie befeike yo^r lo^{ps} that the fame may be grantit vnto ws, and that no forder continewation be grantit to o^r⁴ pairty: And yo^r lo^{ps} anfuer.

DELIVERANCE by the Lords of Privy Council. [On the back of the foregoing Petition.]

APUD Haltrydhoufe, decimo Junij, 1623. THE LORDIS Ordanis a Maiffer to pas and warne both the pairtyis, the *Barone of Achyll*, *David Drummond of Innermaith*, and *Mr Alex^r Seatoun of Gargonnok*, to compeir befoir the Lordis, vpoun Thursday nixt, to heir and sie ordour tane in the mater within-writtin, as accordis.

GEO. CANCELL^s.

Usurpation of the King's authority—Taking captive, &c.

Jun. 18.—ALEXANDER GORDOUN, appeirand of Erlestoun, and James Gordoun, messinger.

Dilaitit of the Vfurpatioun of our fouerane lordis authoritie, in taking and apprehending of Johnne Glendoning of Drumrasche, and keiping him captiue and prifoner be the space of thre houris, *in privato carcere*, he being his Majesteis frie lege, and thai haifing na power nor commissioun for that effect; committit in Februar, or thairby, last.

The perfewar passis *simpliciter* frae the pannellis perfute: Quhairvpoun thay askit instrumentis.

THE JUSTICE ordanis caution to be ffund be the said Alexander, for his entrie, vpoun xv dayis (wairning) for the Kingis pairt; quha fund Vthreid Mc-Dowell of Mondurk, fouertie, &c.

Resetting of a stolen Purse, &c.

Jun. 18.—JOHNNE DOUGLAS in St Leonardis, and Agnes Mustard his spous.

Dilaitit of the Thiftious Resetting of ane stowin purse, with ffyve hundreth pundis of gold; and tua jewellis being thairin, worth thre thowfeand pundis; pertening to Sir Johnne Scott of Newburgh; stowin fra him be Margaret Ahannay.

¹ To be reconciled. ² Without. ³ By way of retaliation, no doubt, for the horrible butchery committed upon the person of *Buchanan*, before referred to. ⁴ Probably for *outher*, i. e. either party.

PERSEWARIS, Sir Johnne Scott of Newburgh, Sir Williame Oliphant, kny^t.

PRELOCUTOURIS in defence, The Laird of Maynes, Mr Laurence M^cGill, James King.

Eftir the reiding of the Dittay, and accusatioun of the pannell of the crymes thairin contentit ; it was allegit be the pannell and thair prelocutouris, that the first pairt of the Dittay is nawayis relevant, anent the reffett of the stowin purse and jewellis thairin ; vules the principall steiller war first callit, and ather convict and pwneist for the cryme, or ellis declarit fugitiue thairfoir : For, gif the principall steiller thairof, viz. Margaret Ahannay, war accuset in this judgement, for the said allegit cryme, it wald be allegit and verifeit be hir, that gif ony purse was apprehendit or gottin be hir fra the persewar, that it was *precium pudicitie*, gevin be him to hir. And thairfoir, quhill first scho be callit, na proces.

THE JUSTICE, in respect na dilligence is vset aganis the said Margaret Ahannay, Ordanis the pannell to find caution for thair re-entrie, vpoun xv dayis wairning : Quha fand James Douglas, portioner of Lugtoun, and Williame Douglas, hatmaker, burges of Edinburghe.¹

Slaughter.

Jun. 27.—COILL M^cGILLESPIK M^cDONALD in Collonfay, Archibald M^c-Donald, his sone, and four others, ‘seruitouris to the said Coill.’

Dilaitit of airt and pairt of the fellone and crewall Slauchter of vmq^{le} Malcolme M^cphie of Collonfay, Donald Oig M^cphie, Dougall M^cphie, Johnne M^cquhirrie, and Ewir Bayne, alias Quhyte ; committit in Februar last.

PERSEWARIS, Marie M^cdonald, the relict ; Donald Oig M^cphie, as sone ; Katharene, Anne, and Fynwall M^cphies, as dochteris to vmq^{le} Malcolme ; Murdoche M^cphie in Ilay, as brother to vmq^{le} Donald Oig, and Dougall M^cphie, and as nerrest of kyn to vmq^{le} Johnne and Ewir.

Johnne Quhyte, wryter, producet the Letteris duellie executed, &c. and protestit for releif of Archibald Campbell, brother to the Laird of Caddell, cautioner for repoirting thairof.—Coll M^callaster, fliear of Dounskye, as cautioner for the said Coill, &c. vnlawit, for nocht entrie of ilk ane of the saidis perfones, in the pane of ane hundreth merkis. And siclyk, the Justice Ordanis that the saidis Coill, &c. fall be denuncet our souerane lordis rebellis, and all thair moveabill guidis to be efcheit, &c.

Taking Captive and Strangling, &c.

Jul. 2.—JOHNNE GRANT of Glenmoreistoun, Finlay M^cean Roy in Invermoreistoun, and Alexander Dow M^cean Roy, his brother.

Dilaitit for Vfurpatioun of our souerane lordis autoritie, in taking of vmq^{le} Donald M^cfindlay V^cnorosiche, mercheand, vpone the landis of Glenmoreistoun, binding his handis behind his bak, and cayreing him, as ane malefactour, to ane

¹ It is likely that this pursuit was abandoned. At least no farther notices occur in the Record.

woid neir to the landis of Glenmoreiftoun ; quhair thay, as hangmen, hang him vp vpon ane trie of the said woid, and wirreit him to deid ;¹ and thaireftir cuttit him down, and, with thair durkis, gaif him dyuerse straikis in the breift and bellic, to the effusioun of his bluid in grit quantitie ; and thaireftir, cayreit him to ane burne-bra,² vnder the quhilk they bureit him, be casting the said bray vpon him ; committit in the moneth of September, 1602 yeiris.

PERSEWARIS, Fynlay Vik-finlay V^cnorofyche, in Kintaill, as brother ; Sir Williame Oliphant of Newtoun, kny^t, Aduocat to our fouerane lord.

James Logy, wryter, producet the Letteris, duellie execute, &c., and protestit for releif of Mr Alexander M^ckenzie of Culcovie of his cautionrie.—Patrik Grant of Carroun, as cautioner for the pannell, Ordanit be the Justice to be in ane amerciament, for nocht entrie of the said Johnne Grant, in the vnlaw of V^c merkis ; and of ather of the saidis Fynlay and Duncane, in the pane of ane hundredth merkis.

[*Mr Alexander Coluile, Justice-Depute.*]

Slaughter.

Jul. 9.—JAMES STEWART, Stewart-depute of Menteith ; Duncane Stewart, his brother-germane, and others.³

Dilaitit of the Slauchter of vmq^{le} Robert M^cphatrik Campbell, and vmq^{le} Malcolm M^ccall ; committit in Apryle last, vpon the landis of Dochallie, on Lochow-syde.

INTRAN. *similiter.*

ALLASTER M^cPHATRIK V^cALLASTER, in Balquhiddel ; Robert Dow M^ccondochie V^cJames, thair ; Duncane Oure Stewart M^cinrie, thair ; Archibald Stewart, thair ; and Williame M^cphatrik Stewart, thair.

Dilaittit for the crymes aboue writtin.

PERSEWAR, Patrik Campbell, in Kenderoche, brother to vmq^{le} Robert.

The Laird of Keir takis instrumentis of the entrie of the fourtene on pannell (Stewarts), and protestis, in that respect, for his awin releif, as cautioner, &c. ; and as to Duncane Stewart, declairis he hes fallin feik, sen his cuning to Edinburgh, and thairfoir could nocht compeir.—Sir Mungo Murray protestis for his releif, as cautioner for the others, ‘ the fyve men of Balquhiddel.’

THE JUSTICE, with consent of the persewar, continewis this matter to ane xv dayis wairning ; and Ordanis the pannell to find caution for thair entrie.—The Laird of Keir, and Sir Mungo Murray, of new become cautioneris.

¹ Strangled him to death. ² Burn-brae, a sloping bank, along the foot of which a *burn* or rivulet runs.

³ Their names are, Alexander Stewart, *alias* M^cean, in Glenfinglas ; Johnne, Archibald, and Andro Stewartis, his thre fones ; Patrik Stewart of Stragartnay ; Johnne Stewart, his brother ; Robert Stewart, sone to Andro Stewart of Blairgarrie ; Patrik M^cKyndlay Gill, in Glenfinglas ; Walter M^ceandowie, *alias* Stewart ; Johnne M^cintyre, seruitor to James Stewart ; Gilliechreift Dewar, Duncane M^ceane Vaill, and Donald Reoch, seruand to the said James Stewart.

My Lord of Murray, present, obleift him to Warrant and releif the Laird of Keir of his former cautionerie, &c.

Breaking Gardens—Theft, &c.

Jul. 23.—JOHNNE RATE, and Alexander Deane, cramer.¹

Dilaitit for the breking of the yairdis² of Barnetoun, Piltoun, Barnebougall, Craikcruik, Cragyhall, Langhirdmeftoun, Carlowrie, and Libbertoun, and dyuerfe vtheris yairdis, within Eift and Weft Louthiane: Steilling and away-taking furth thairrof, off dyuerfe herbis, bie-fkeppis,³ fyboes,⁴ plantis, kaill-feid, arte-choiffis,⁵ diftilled watteris, plaittis and trunfcheouris,⁶ with ane tyn-ftoupe,⁷ furth of the place of Langhirdmeiftoun; committit at dyuerfe tymes, within this moneth bygane.

The perfonen on pannell confeffis the Dittay, and crymes thairin contenit.

VERDICT. Fand the faidis Johnne and Alexander, conforme to thair awin Judiciall Confeffioun, to be ffylet, culpable, and convict, &c.

THE Justice Ordanit thame to be tane bak to waird, thair to remane quhill he be advyfet with the Lordis of Secreit Counfall, anent the Dome to be pronuncet aganis thame, for the faidis crymes.

Jul. 25.—SENTENCE. The Justice Ordanit the faidis Johnne Rait and Alexander Deane to be tane to the Burrow-mure of Edinburghe, and thair to be Hangit quhill thay be deid; and thair haill moveable guidis to be efcheit, &c.: And that by virtue of the following WARRANT of the Lordis of Secreit Counfall.

JUSTICE, Justice clark and 3our deputis. 3ow fall pronounce Sentence of daith againft Johnne Rait and Alex^r Deane, cramer, who was convict of befoir in Muffilburghe, for the breking of 3airdis and fleilling of findrie bie-fkepys furth of the fame; and who, fince thair apprehenfioun, haif of laif bene convict befoir 3ow of the fame crymes; committit be thame fince thair laft convictioun and pwneifment following thairupoun. And that 3ow caufe the Sentence of daith be execute vpone thame: Quhair-anent theife presentis fall be vnto 3ow ane fufficient Warrant. Gevin at Halyrudhous, the xxiiij day of July, 1623.

GEO. CANCELL^s. GLENCARNE. NITHSDAILL. OLIPHANT. HAMILTON.

Sorcery—Witchcraft.

Aug. 1.—THOMAS GREAVE.

Dilaitit of dyuerfe poyntis of Sorcerie and Witchcraft following, viz.: For cureing of the perfonen following, be Sorcerie and Witchcraft, to wit: ANE fone of Archibald Arnote in the Wayne, of ane heavie and vncouth⁸ feiknes: ANE fone of Andro Geddis in Freuchie, alfo hevilie diffeift: ANE bairne of Thomas Kilgoures in Falkland, viifeit with ane grevous feiknes. ITEM, for cureing, be

¹ Huxter; one who keeps a petty booth for the sale of small wares. ² Gardens. ³ Bee-hives. ⁴ A young or small sort of onion. ⁵ Artichokes. ⁶ Trenchers. ⁷ Tin flagon.

⁸ Strange; unusual; unaccountable.

Sorcerie and Witchcraft, and making of certane croces and finges,¹ off Daid Chalmer in Lethame, and be causeing wasche his fark² in ane South-rynnand watter, and thairefter putting it vpon him ; quhairby he ressaute his helthe. ITEM, ffor cureing of ane woman in Ingrie, besyde Leslie, of ane grevous seiknes, be taking the seiknes of hir and puting it vpon ane kow ; quhilk kow thairefter ran woid,⁴ and deit. ITEM, ffor cureing off Alexander Laufones bairne, in Falkland, of grit seiknes, be Sorcerie, and making of certane signes, and vttering of dyuerse vnknawin woirdis. ITEM, ffor cureing of ane woman, duelland besyde Margaret Douglas, of ane grit and panefull seiknes, be drawing hir nyne tymes bakward and fordward be the leg. ITEM, ffor cureing of Michael Glassies wyfe, in the Mylnes of Forthe, of ane grevous seiknes, be causing brek ane hoill in the wall, vpon the North syde of the chymnay, and putting ane hesp⁴ of yairne thre feveral tymes furth at the said hoill, and taking it bak at the dur ; and thairefter, causeing the said Michaelis wyfe ix tymes pass throw the said hesp of yairne, and thairby to procure hir help. ITEM, ffor cureing, be devillerie and Witchcraft, of Williame Kirkis bairne, in Tulliebule, of the seiknes callit *Morbus caducus*,⁵ be straiking bak the hair of his heid, taking ane lang claith, with certane vnguent and vther inchantit matter, furth of ane buist,⁶ and rowing⁷ the bairne nyne tymes within the said claith, vttering, at ilk tyme of the putting about of the claith, dyuerse wordes and croces and vther signes ; and be that meanis pat the bairne asleip ; and thairby, throw his devillerie and Witchcraft, curet the said bairne of the said seiknes. ITEM, vnderstanding that Johnne Fischer, in Achalanckay, was heviellie diseasit of a grevous and vnknawin fever, vpon aduerteisment gevin to him thairof, he causit bring the said Johnne Fischeris fark to him ; quhilk fark being brocht, the said Thomas, turning it over, cryit out at that instant, ‘ Allace ! the Witchcraft appointit for ane vther hes lichted vpon him ! ’ And, loking at the breist of the fark, he tauld ‘ that the seiknes was nocht cum as yet to his heart.’ And eftir some croces and signes maid be the said Thomas vpon the fark, delyuerit the fark to Jonet Patoun, the said Johnne Fischeris mother, commanding hir, with all speid to ryn to him thairwith ; and declairit to hir that ‘ Gif scho come thairwith, befor his heart was assaulted,’ he shuld convalesce ; At quhais cuming to him with the said fark, the said Johnne hir sone was deid. ITEM, ffor practizeing of dyuerse poyntis of Sorcerie vpon Williame Beveridge, in Drumkippie, in Salen, and cureing him thairby of ane grevous seiknes, be causeing him pass throw ane hesp of yairne thre feuerall tymes ; and thairefter burning the said hesp of yairne in ane

¹ Crosses and signs. ² Shirt. ³ Mad. ⁴ A hasp of yarn is equal to twelve ‘ cuts,’ or six ‘ heer.’ Each ‘ cut’ goes six score times round the reel. ⁵ Epilepsy, or the falling sickness. Perhaps it may refer to consumption, ‘ decay’ or ‘ decline.’ ⁶ Out of a small box or chest.

⁷ Wrapping ; rolling.

grit ffyre, quhilk turnet haillilie blew. ITEM, ffor cureing of Margaret Gib-fones ky,¹ in Balgonie, be putting thame thryse throw ane hespe of yairne, and casting of certane inchantit watter, inchantit be him, athort² the byre; and thairby making thair milk to cum to thame agane, quhilk thay gaif nocht ane moneth ofbefoir.³ ITEM, at Martimes, 1621, Elspeth Thomesone, sifter to Johnne Thomesone, portioner of Pitwar, being visseit with ane grevous feiknes, the said Thomas com to hir hous in Corachie, quhair, eftir fichting and gripping of hir, he promeist to cure hir thairof; and so this effect callit for hir fark, and desyret tua of hir nerrest freindis⁴ to go with him: Lykas, Johnne and Williame Thomesones, hir brether, being sent for, past with the said Thomas, in the nicht seasone, fra Corachie towardis Burley, be the space of tuelff myles; and inioynet the tua brethir nocht to speik ane woird all the way; and quhat euir thay hard or saw, nawayis to be effrayed, saying to thame, 'it mycht be that thai wald heir grit rumbling, and sic vncouth and feirfull apparitiones, bot nathing sould annoy thame!' And at the ffurde be-eist Burley, in ane South-rynning watter, he thair wusche the fark; during the tyme of the quhilk wasching of the fark, thair was ane grit noyse maid be ffoullis,⁵ or the lyll beistis,⁶ that arraise and flichtered in the water. And cuming hame with the fark, pat the samyn vpon hir, and curet hir of hir feikens: And thairby committit manifest Sorcerie and Witchcraft. ITEM, ffor cureing of Williame Cousines wyfe, be Sorcerie and Witchcraft, be causing hir husband heit the coulter of his plench, and cule the samyn in watter brocht from Haly Well of Hillfyde; and thaireftir, making certane coniurations, croces, and signes vpon the watter, causet hir drink thairof for hir helth; and thairby, be Sorcerie, curet hir of hir feiknes. ITEM, ffor cureing, be Sorcerie and Witchcraft, of James Mwdie, with his wyfe and childrene, of the fever; and namelie, in cureing of his wyfe, be causeing ane grit ffyre to be put on, and ane hoill to be maid in the North fyde of the hous,⁷ and ane quik hen⁸ to be put furth thairat, at thre feuerall tymes, and tane in at the hous-dur, widderschynnes;⁹ and thaireftir, taking the hen and puting it vnder the feik womanis okstar,¹⁰ or airme; and thairfra, cayreing it to the ffyre, quhair it was haldin doun and brunt quik thairin; and be that devillisch maner, practizet be him, curet hir of hir feiknes: ffor the quhilk, the said Thomas reslauit xx lib. fra hir husband. AND last, ffor commoun Sorcerie and Witchcraft, practizet be him, and abuseing the people thairby; expres aganis Godis devyne Law, and Actis of Parliament maid aganis Sorceraris.

VERDICT. The Assyse, being ryplic advysed thairwith, togidder with certane

¹ *Kine*; cattle.

² Athwart; across.

³ Which they had not yielded for the space of a

month.

⁴ Kinsmen; relations.

⁵ Water-fowl.

⁶ Little 'beasts'; *Scotticé*, for some

sort of small birds or fowls, such as snipes, &c.

⁷ A hole to be made in the north wall of the

house.

⁸ A live fowl.

⁹ Backwards; contrary to the course of the sun.

¹⁰ Arm-pit.

Depositiones producet be Mr Johnne Cowdoun, Minister at Kynrois, Mr Edmond Myles, Minister at Cleifche, Mr Robert Coluile, Minister at Cleifche, ffor verification thair of; thay, be the declaratioun of Williame Dempstartoun, chancellor, fstand, pronuncet, and declairit the said Thomas Greave to be ffylet, culpable, and convict of the haille poyntis of Dittay aboue writtin.—SENTENCE. To be tane to the Castell-hill of Edinburghe, and thair to be Wirreit at ane staik, quhill he be deid; and his body thaireftir to be Brunt in asches, as culpable and convict of the saidis crymes of Sorcerie and Witchcraft.

Offices of the Clerkship of Justiciary-general and Master of the Ceremonies, &c.

Nov. 28.—SIR ARCHIBALD NAPER of Merchinfloam, kny^t, Thesaurer-depute to our fouverane lord of this Kingdome, producet his Maiesteis Gift, grantit to him, vnder his hienes Previe seall, of the Offices of the CLERKSCHIP OF JUSTICIARIE-GENERALL, and MAISTER OF THE CEREMONEIS at the Creatioun of all Erles, Lordis, and Barrones, and of all vther solemne Assembleis, quhair honourable ceremoneis ar accustomat and necessarie to be vsed, within the kingdome of Scotland; with all richtis, privileges, liberteis, feyis, casualteis, proffetit, and deuteis quhatfumeuir, pertaining and belonging thairto; during all the dayis of the said Sir Archibaldis lyfytyme: Vacand in his Maiesteis handis, be dimiffioun of Sir Johnne Cokburne of Ormestoun, kny^t, last Justice Clerk, and Maister of the said Ceremoneis. Dated at Roystoun, the sext day of November, 1623.—Which Gift was ordanit to be insert in the Registeris of Adiornall, *ad futuram memoriam*.

Commission of Justiciary,

IN FAVOUR OF SIR GEORGE ERSKINE OF INNERTEILL.

Jan. 23, 1624.—MY Lord of Innerteill, as Justice to our fouverane Lord, producet his Maiesteis Commissioun of Justiciarie; and desyret the samyn to be insert in the Register of Adjournal, *ad futuram memoriam*.

JAMES R.

JAMES, by the grace of God, King of Grite Britane, France, and Ireland, defender of the ffaithie: To all and findrie our leigis and subiectis whome it effeiris, to whose knowledge thir our Letteris fall come, greating. FORSAMEKILL AS, the place and Office of the JUSTICE of this our Kingdome is now voyde, and the administratioun of Justice, in matteris proper to that judgement, ceasses by the absence of those who formarlie suppleit that place: AND whear as, the frequent occasioun, daylie occurring within this our kingdome, requyres a present choise to be maid of some sufficient and qualifeit persone to exerce the said place and office: And We, vnderstanding the goode affectioun of our trustie and weilbelouit counsalour, *Sir George Erskine* of Innerteill, to do ws seruice, and that he is a persone of sound and vpriecht judgement, and vtherwayis accomplischet and furneist with giftis anfuerable to the

¹ From the peculiarity of this document, it has been thought right to preserve it entire, without abridgement.

dignitie of fuche ane employment : Thairfoir, We haif maid and constitute, and be the tennour heirof makis and constitutis, the said Sir George our JUSTICE, and geves to him the Office thairof, with all honnouris, digniteis, prevelegis, and prerogatiues belonging thairto ; to be posselt, bruket, vfed, and exerceid be him als frelie and ampie, in all respectis and conditiones, as ony vtheris his prediceffouris in the said Office formerlie bruket the fame ; with power to him to senfe and hald Justice-Courtis within the Tolbuith of our burghes of Edinburghe, and vtheris pairtis of our Kingdome, accordring as the necessitie of oure seruice schall requyre, and to proceid and minister justice in all and sundrie materis occurring in that judgment, and vpon all persones of quhatfomeuir qualitie, that fall be presentit in judgement befor him, to abyde thair tryell ; and accordring as thay fall be fund Guiltie or Innocent of the crymes to be objectit vnto thame, and to be laid to thair charge, to caus justice be ministrat vpon thame, conforme to the lawis of our realme : Afflysses neidfull, to this effect, vnder the vsuale and accustomed panes, to summond, wairne, choofe, and caus be fuorne ; and to creat officiaris and memberis of Court neidfull ; and all vther thingis neidfull towardis the executioun of this our Commissioun to do and vse, whiche laughfullie, in such caises, may be done ; ferme and stable halding, and for to hald all and quhatfomeuir thingis fall be laughfullie done heirin. CHARGEING heirfoir yow, all our said leiges and subiectis, to reuerence, acknowledge, and obey our said Justice, in all and everie thing tending to the executioun of this our Commissioun : As yow and everie ane of yow will answeir to us vpon the contrair, at your perrell. This our Commissioun, dureing our will and pleasour, and ay and quhill we discharge the fame, to indure. GEVIN vnder our signet, AT ED^B, the tuentie day of Januare, and of oure reigne the lvij and xxj yearis, 1624.

GEO. CANCELL^S. MELROS. LAUDERDAILL. R. COKEBURNE. KILSAYTH.
W. OLIPHANT. A. HAY. AR. NAPER. J. HAMILTON.

[*Sir George Erskyne of Innerteill, knyght, Justice.*]

Egiptians—Vagabounds—Sorners, &c.

Jan. 23.—CAPITANE JOHNNE FAA, Robert Faa, Samuell Faa, Johnne Faa younger, Andro Faa, Williame Faa, Robert Broun, Gawin Trotter, all Egiptianis, Vagaboundis, and commoun Thevis, &c.

Being enterit vpon pannell be the Magistratis of Ed^t, dilaitit, accuset, and persewit be Sir Williame Oliphant of Newtoun, kny^t, of the cryme vnderwrittin, viz. FORSAMEKILL AS, first, be Act of Secreit Counfall, maid in the moneth of Junij, or thairby, in the yeir of God 1603, and Proclamatioun following thairupoun, commanding and chargeing the Vagaboundis, Soirneris, and commoun Thevis, commonlie callit EGIPTIANES, to pas furth of this Kingdome, and to remane perpetuallie furth thairof, and nevir to returne agane within the samyn, vnder the pane of daith ; quhilk Act of Secreit Counfall, and Proclamatioun following thairupoun, be the 13 Act of our souerane lordis 20 Parliament, haldin at Edinburgh vpon the 24 of Junij, the yeir of God 1609 yeiris, is ratifeit, approvin, and confirmet be his Maiestie and Estaitis of Parliament than convenit ; and the same Act ordanit to haif force and executioun, eftir the first day of August nixt thaireftir following, in the foirsaid yeir of God 1^m.Vj^e. and nyne yeiris ; eftir the quhilk tyme, gif ony of the saidis Vagaboundis callit EGIP-

TIANES, alſweill wemen as men, ſall be fund within this kingdome, or ony pairt thairof, it ſall be leafum to all his Maieſteis goode ſubiectis, or ony of thame, to caus tak, apprehend, imprifſone, and execute to death, the ſaidis Egiptianes, ather men or wemen, as commoun, notorious, and condempned Theves, by ane Affyſe, only to be tryed¹ that thay ar callit, knawin, and repute and haldin Egiptians: In the quhill caice, quhatſoeur of the Affyſe hapins to clange ony of the foirſaidis perſones, Egiptianes, pannelled as ſaid is, ſalbe perſewit, handillit, and cenſuret as committeris of Wilfull Errour. As the ſaidis Actis of Secreit Counſall, Proclamatioun following thairupoun, and Act of Parliament aboue writtin, deulie publeiſt, in the ſelfſ propertis. Nochtwithſtanding quhairof, it is of verritie, that the foirnamet aucht perſones inpannelled, and ilk ane of thame, being Vagaboundis, Soirneris, cowmoun Thevis, callit, knawin, repute, and haldin EGIPTIANES, in plane contempt of his Maieſteis lawis and Actis of Parliament, hes proudlie repairit to this kingdome, remanit and abiddin within the ſamyn, and nawayis depairtit nor paſt furth thairof, ſen the ſaid firſt day of Auguſt, 1609 yeiris, appointit for thair away-paſſing; incurring thairthrow the pane and pwneiſchment aboue writtin, mentionet in the ſaid Act of Parliament.

ASSISA.

James Lokhart, elder of Lie, . . . Leith of Hairthill, Williame Sydſerff of Ruchelaw.²

VERDICT. The Affyſe, for the maiſt pairt, be the declaratioun of the ſaid James Lokhart of Lie, chancellor, ſſand, pronuncet, and declairit the ſaidis perſones (being all Vagaboundis, and repute and haldin for EGIPTIANIS) to be Giltie, culpable, and convict of contravening the tennour of the ſaid Act of Parliament, &c.

THE JUSTICE continewis the pronunceation of Dome, vpone the former³ convictionn, to the morne; that in the meane tyme he may advyſe with the Lordis of Secreit Counſall thairanent: And ordanit the pannell to be tane bak to waird, in the meane tyme.

Jan. 24.—SENTENCE. To be tane to the Burrow-Mure of Edinburgh, and thair to be HANGIT quhill thay be deid; and thair haill moveabill guidis, gif thay ony haif, to be eſcheit to his Maieſteis vſe, &c.⁴

Egiptians—Sorners, &c. (Females.)

Jan. 29.—HELENE FAA, the relict of vmq^{le} Capitane Johnne Faa; Lucree Faa, ſpous to James Broun; Elſpeth Faa, brether-dochter to the Capitane; Katharene Faa, relict of vmq^{le} Eduard Faa;

¹ Proved; eſtabliſhed.

² The remainder are burgesſes of Edinburgh. James Hopper of Bourhouſſis, the Laird of Coulter-Cuming, . . . Ogilvie of Boyne, . . . Maxwall of Cowhill, and ſix others, ('mercheandis,') are 'vnlawit 100 merkis ilk ane of thame.'

³ Preceding.

⁴ See the following article, Jan. 29, and Mar. 22, where the proceedings againſt their helpless widows are recorded.

Meriore Faa, spous to James Faa; Jeane Faa, the relict of vmq^{le} Andro Faa; Helene Faa, the relict of vmq^{le} Robert Campbell; Margaret Faa, dochter to vmq^{le} Eduard Faa; Iffobell Faa, the relict of vmq^{le} Robert Broun; Margaret Valantyne, relict of Johune Wilfoun; Elspeth Faa, dochter to vmq^{le} Henrie Faa.

Dilaitit for contravening the 13 Act of his Maiesteis tuentie Parliament, haldin at Edinburgh, the 24 of Junij, 1609 yeiris, maid aganis EGIPTIANIS, chargeing thame, alaweill women as men, to pas furth of this kingdome, and to remane perpetuallie furth thair of; and nevir to be fundin within the samyn, eftir the first day of August thaireftir, in the said yeir of God 1609, vnder the pane of deid: And the foirnamet perfonas, being all Theves, Vagaboundis, and Egiptianis, sa repute and haldin, and tane as people of that unhappie race and societie, hes, be thair remaning within this kingdome eftir the tyme foirsaid, appointit for thair away-passing furth thair of, contravenit the tennour of the said Act of Parliament, and incurrit the pwneischment aboue writtin, mentionet thairintill.

VERDICT. Giltie, culpable, and convict of the contravening of the foirsaid Act of Parliament.—SENTENCE. To be tane to the place of thair executioun, in some convenient pairt, and thair to be DROWNED quhill thay be deid; and all thair moveabill guidis, gif thay ony haif, to be confiscat to his Maiesteis vse, &c.

(Mar. 22.)—THE above persons, together with ALEXANDER FAA, sone to Eduard Faa, JOHNNE FAA and FRANCIE FAA, sones to vmq^{le} Capitane Johnne Faa, and HARIE BROUN, brother to vmq^{le} Robert Broun, being brocht furth of waird, and presentit of new agane vpone pannell, as thay that war convict of EGIPTIANES, and the Dome of daith pronuncet aganis ellevin of thame, vpone the xxix day of Januar last, the executioun quhair of was superceidit, be the Lordis of Secreit Counfallis Warrant and directioun, vnto the tyme our fouerane Lordis will and pleasour war knawin thairanent.

HIS MAIESTEIS Letter and Directioun sent to the Counfall.

To our right trustie and right weilbelouit counsalour, SIR GEORGE HAY of Kynfawnes, kny^t, our Chancellor, and to our right trustie and right weilbelouit counsinges and counsalouris, and vtheris our trustie and weilbelouit counsalouris, THE ERLES, LORDIS, and vtheris of our PREVIE COUNSELL, in our kingdome of SCOTLAND.

JAMES R.

RIGHT trustie and right weilbelouit counsalour, right trustie and right weilbelouit counsinges and counsalouris, and vtheris our trustie and weilbelouit counsalouris, We greete yow well. We haue vnderstood, by your Letter of the 29 of Januar last, that a number of these Theeves and counterfooted Vagabondis, commonlie callit EGIPTIANIS, being apprehendit be your directioun, war thereftir put to a Criminall tryell, and being lawfullie convicted, that eight of the men wer executed, and that the rest, being either childrene and of lesse-age, and women with chyld, or geving sucke to childrene, 3e haue therefore committed thair perfonas to prissone, superceiding the executione of the Sentence pronounced

aganis thame, till yee should acquaynte ws, and know oure further pleafoure thairanent. IN whiche regaird, these are to certefie to yow, that as We allow well of the courfe taiken for executeing of the men, so now, in colde bloode, (these children and weemen haueing beene foe long kepte prisoneris,) and cheffie in respect of that which yee wryte to be the present estaite of most part of these weemen, We can not bot inclyne to pittie and compassion of them. WHEREFORE, as We ar willing that their lyues be spared, foe that nather thame felues, nor any others of that kynd may be therby emboldned to presume vpon our clemencie, yee fall caus thame act them felues to depairt, with their childrene, furth of that our kingdome, between and such a competent day as yee shall think fitting, for that effect, to prescribe; vnder the payne of death, to be inflicted (without any forder proces or dome) vpon them, wherfoever they can be apprehendit within our said kingdome, efter the said day. AND for your putting them to libertie, (nochtwithstanding the Sentence pronounced against them,) vpon condition foirfaid, these shall be vnto yow a Warrant sufficient. And foe We bid yow farewell. FROM our Honour of HAMPTON, the 13 of Merche, 1624.

THE JUSTICE, conforme to his Maiesteis Letter and directioun, caufit the hail Egyptianis aboue writtin, presented vpon pannell, act thame selffis, lyk as thay and ilk ane of thame, of there awin frie motiue, and with the blessing of God to his Maieftie and Counfall, become actit and obleift to depairt and pas away with thair childrene furth of this realme; and nevir to be fund thairintill, eftir the tuentie-tua day of Apryle nixtocum, vnder the payne and pwneischment of daith, without any forther proces or doome, to be inflicted but fauour¹ vpon them, quhaireuir thay fall be fund or apprehendit, within this kingdome, eftir the said day.

Treasonable and Masterful Theft and Stouthreif.

Mar. 3.—[DAME MARGARET OGILVIE, COUNTESS OF MARSCHELL,²

SIR ALEXANDER STRAUCHANE of Thornetoun, kny^t, (hir spouse,) and Mr Robert Strauchane, Doctour in Phisik.

Dilaitit of the Maisterfull Thift and Stouthre-reif, ffurth of the Place of Benholme, pertening to vmq^{le} GEORGE ERLE MARSHALL, of certane his Lordschipis jouellis, siluer-plait, houshald-stuff, gold, siluer, euidentis, writtis, and vtheris guidis, at lenth expressit in the criminall Letteris direct thairupoun, at the instance of our fouerane lordis Aduocat; committit in October 1622, a littill befor the said Erles deceife.³

PERSEWAR.

Sir Williame Oliphant, kny^t.

PRELOCUTOURIS in defence.

Mr Thomas Hoip, Mr Lueis Stewart.

The perfones enterit on pannell takes instrumentis of thair entrie, and protestis for releif of Sir George Afflek of Balmauno of his cautionerie. There was presented the following

WARRANT of the Lordis of Secreit Counfall.

APUD ED^B, *secundo die mensis Marcij*, 1624. THE Lordis of Secreit Counfall, ffor some speciall

¹ Without fauour or merey.

² Daughter of James, *sixth* Lord Ogilvy of Airly. She was the second wife of George, *fifth* Earl Marischal.

³ He died at Dunottar Castle, Apr. 2, 1623, in the seventieth year of his age. He had studied at several foreign Universities, and was an accomplished and learned individual. Besides his Embassy, he had filled the high office of Lord High Commissioner to the Parliament of Scotland, by Commission under the Great Seal, Jun. 6, 1609.

considerationes moveing thame, Ordanes and commandis the Justice, Justice-clerk, and thair deputis, to continew the dyet appointit to DAME MARGARET OGILVIE, COUNTES OF MARSCHELL, Sir Alexander Strauchane of Thornetoun, hir spous, and vtheris perfonas specifeit in the Criminall Letteris raisit pairupoun, ffor pair compeirance befor pe Justice, vpone the thrid day of Marche instant, to vnderly the Law for the crymes of Thift and Stouth-reiff of the houthald stuff, insight pleniffing, filuer plait, and vtheris goodis pertening to the lait Erle of Merfchell, and at lenth specifeit in the saidis criminall letteris raisit at pe instance of his Maieftis Aduocat, vntill the secund day of Julij nixtocum; takand new caution of pe defenderis, for pair compeirance that day, conforme to the ordour. Quhairanent pe Extract of pis Act fall be vnto pe said Justice, Justice-clerk, and thair deputis, ane sufficient Warrant.

EXTRACTUM de Libris Actorum Secreti Consilij, f. d. n. Regis, &c. JACOBUS PRYMROIS.

Sir George Afflek of new becomes cautioner for the saidis Dame Margaret, &c., vnder the panes contenit in the Actis of Parliament.

[*Mr Alexander Coluile of Blair, Justice-Depute.*]

(Jul. 2.)—ANOTHER Warrant, dated ‘at Halyrudhous, the first day of July’—and signed by ‘Geo. Cancell^s. Mar. Morton. Linlithgow. Melros. Lauderdale. Aw. Carnegie’—directs the case to be continued ‘vntill the xxvij of July instant, vpone new caution:’—‘And that yow dispens with the personall compeirance of the Lady Marschell and Doctour Strauchane.’

(Jul. 27.)—A THIRD Warrant, dated ‘at Halyrudhous, the xxij of July,’ and subscribed, ‘Geo. Cancell^s. Mar. Melrois. Lauderdale. J. Kokburne. Kilsayth.’—David Levingstoun of Donypace becomes cautioner for their entry on the aucht day of December nixt.

(Dec. 8.)—No procedure is entered in the Record of this date.

[*Sir George Erskine of Innerteill, kny^t, Justice.*]

Treasonable and Masterful Theft, &c.

Mar. 3.—JAMES KEITH of Benholme.

Dilaitit of airt and pairt of the tressonabill¹ and theftious steilling, be way of Maisterfull-thift and Stouth-reiff, in the moneth of October, 1622 yeiris, furth of the Place of Benholme, off ane grene coffer, pertening to vinq^{le} GEORGE ERLE MARSCHELL, with the jowellis and vtheris vnder writtin being thairintill, als pertening to his lordship, viz. of Portugall ducattis, and vtheris spaces² of foreigne gold, to the avail³ of tuentie thowfand pundis, or thairby; threttie-sax duflane of gold buttones; ane ritche jowell, all set with dyamontis, quhilk the said vinq^{le} Erle ressaute as ane gift gevin to him the tyme he was Ambassadour in Denmark, worth sex thowfand merkis; the Quene of Denmarkis pictour in gold, set about with ritche dyamontis, estimat to fyve thowfand merkis; ane jasp stane for

¹ *Treasonable*, as being committed by a landed Gentleman, in terms of an Act of Jac. VI. ² *Species*. ³ *Worth; value*.

stemming of bluid,¹ estimat to fyve hundreth French crownes; ane chenzie² of equall perle, quhairin was foure hundreth perles gritt and small; tua chenzies of gold, of tuentie-foure vnce wecht; ane vther jowall of dyamontis fet in gold, worth thre thousand merkis; ane grit pair of bracelettis, all sett with dyamondis, pryce thair of fyve hundreth crownes; the vther pair of gold bracelettis, at sex hundreth pundis the pair; ane turcas³ ring, worth ten French crownes; ane dyamond fet in ane ring, price xxviiij French crownes; with ane number of vther small ringis, fet with dyamondis and vtheris ritche stanes in gold, worth thre hundreth Frenche crownes; mair, sextene thousand merkis of siluer and gold, reddie cunzeit,⁴ quhilk was within the said grene coffer; togidder with the haill Tapestry, siluer-work, bedding, and vther guidis, geir, and plenishing, being within the said Place, particulerlie specifit and set down in the Criminall Letteris direct aganis the said James Keyth of Benholme and his complices.⁵ AS ALSO, for airt and pairt of the thiftious steilling and away-taking, be way of maisterfull Thift and Stouthereiff, in the moneth and yeir of God foirsaid, furth of the said Place, of ane grit clothe bag, with the said vmq^{le} Erle his haill eidentis⁶ and writtis of his landis and leving of Benholme, and vtheris his landis and barroneis, being thairintill; and remanent capitall crymes contenit in the saidis Criminall Letteris, &c.

Andro Barclay of Vnthank, as cautioner, is decernit and ordanit to be in ane amerciament, viz. for nocht entrie of the said James Keyth, in the pane and vnlaw of ane thousand merkis: And siclyk, that the said James be denuncet our souerane lordis rebell, and put to his hienes horne; and his haill moveabill guidis to be escheit and inbrocht to his Maiesteis vse, as fugitiue fra his hienes lawis for the saidis crymes.

Stealing Corn, &c.

Mar. 24.—HARIE MENTEITH of Pansteid; James and Williame, his tua sones; Andro Menteith, sone-naturall to the said Harie; Johnne Menteith, callit of Balderstoun; and six others.

Dilaitit of the thiftious steilling and away-taking, furth of Thomas Kincaid of Warieftoun his barnes of Saltecottis, in the Eist-Kerfe, lyand in the barrony

¹ Various virtues were anciently attributed to certain precious stones, such as the present, (*stemming* of blood,) as antidotes against poison, &c. The following curious entry occurs in the Books of the *Lord High Treasurer of Scotland*, Feb. 9, 1504.—‘ITEM, to the said Williame [*Foular*, potingary,] for ANE BLUESTANE, and thre vnce vjir stuf, for THE QUENE, for bleding of þe nefe; eftir ane R. (*recipe*) of *Maister Robert Schaw*, xxij f.’ ² Chain, or string. ³ Turquois. ⁴ Ready coined.

⁵ The above highly interesting detail shows, in a very striking point of view, the immense wealth which was accumulated and enjoyed by many of the Scottish Nobility at this period. Other portions of this Collection prove that considerable riches were possessed by some of the smaller Gentry, where such a display might not have been expected. ⁶ Title-deeds.

thairof, and scherefdome of Sterling, off threttie bollis of aittis, faxtene bollis of peis, and tuentie bollis beir, pertening to the said Thomas Kincaid.

The perfewar producet our fouerane lordis Letteris, be vertew quhairof the saidis perfonas, and ilk ane of thame, ar denuncet rebellis, and put to the horne, for nocht finding of cautioun to haif compeirit, &c.; and protestit for relief of Johnne Kincaid portioner of Gogar, his cautioner.

[*Mr Alexander Coluile of Blair, Justice-Depute.*]

Murder.

Jun. 5.—JAMES GALBRAITH, in Lekkies.

Dilaitit of the Murthour and Slauchter of vmq^{le} James Broke in Kirkpatrick, his brother-in-law; committit vnder nycht, betuix Kirklistoun and Corstorphin, in thair cuming furth the hie-way togidder towardis Edinburgh, in the moneth of Apryle last, in the begynning thairrof.

ASSISA.

James Tennent of Lynhous,
Johnne M^cFarlane of Arrochar,

James Burnet of Barnes,
Alexander Lokhart of Braidshaw.¹

The pannell confessis, in prefens and audience of the Assyse, the Murthour and Slauchter contenit in his Dittay.

VERDICT. The Assyse being ryplie and at lenth advyset with the Dittay, togidder with the said James Galbraith his awin Confessioun maid in judgement, with his Deposition maid be him, vpon the thrid day of Junij instant, in prefens of the haill lordis of Counsell and Sessioun, confessing the Murthour aboue writtin, thay all in ane voce ffind, pronuncet, and declairit the said James to be ffylet, culpable, and convict.—SENTENCE. To be tane to the Mercat-croce of Edinburgh, and thair his heid to be strukin frome his body; and his haill guidis and geir to be efcheit, &c.

Theft—Slaughter—Fire-raising—Intercommuning with the MacGregors, &c.

Jul. 17.—JOHNNE ROY M^cFARLANE, sone to Andro of Gortane, and others.²

Dilaitit of the feuerall crymes of Thift and Slauchter following, viz. The said *Johnne Roy M^cFarlane*, ffor airt and pairt of the Slauchter of vmq^{le} Williame M^cclane in Blairvak, servand to vmq^{le} Duncane M^cfarlane of Blairvak, for the tyme; committit vpon the thrid day of October lasthypsast, 1623 yeiris: And

¹ The rest of the Assise were tradesmen. James Tennent, chancellor. ² The remainder of the pannells were, 'Johnne Beg M^ccauife M^cfarlane (in Stukewa), Duncane M^ccorrie M^cewin (M^cfarlane in Ardlowie), Johnne M^cinnair M^cfarlane in Garboyle, Thomas Moir M^cfarlane, (sone to Duncane Dow M^cfarlane in Morlagane,) Allaster Blair (in Brachairne), Johnne (Dow) Blair, his sone, Johnne Gar M^cgilliemichell, (servitour to Robert Abroche M^cGregour,) Duncane Bayne M^ccartnay, (servand to Robert Abroche M^cGregour.)'

ficlyk, for airt and pairt of the tressonable Raifing of ffyre, and Burning of the house of Abervrchill, pertening to vmq^{le} Colene Campbell of Abervrchill, being in company with Johnne Dow M^cCondochie Bayne, his maister, and vtheris his complices, at the said Burning; committit a ten yeir syne, or thairby. ITEM, the said *Johnne Beg M^cCauise M^cfarlane*, ffor the thiftious ressetting of ane blak kow, quhilk was stowin be Johnne Roy M^cWilliame M^cfarlane, furth of the landis of Balliemoir, fra Andro M^cWilliame M^cfarlane, in the moneth of December last: And siclyk, for airt and pairt of the steilling of tua ky furth of the landis of Clofvrak, pertening to Callum M^cfarlane, indueller thair: And als, for airt and pairt of the thiftious steilling, at the leist ressetting, of ane blak horse, stowin be Duncane M^ccorriche M^ceane M^cfarlane, furth of the cuntrie of Argyle; committit in Marche last. ITEM, the said *Duncane M^ccorrie M^ceane M^cfarlane*, ffor airt, pairt, and being in company with Johnne Roy M^cWilliame M^cfarlane, at the steilling of ane broun kow, a four yeir syne, or thairby: And for airt and pairt of the steilling of nyne lambes, pertening to Johnne M^ccorrie M^cfarlane and Patrik M^ccorrie M^cfarlane in Ardnulrig, furth of the Mure of Ben-Mourlig, in the moneth of Junij I^m.Vj^c.xxij yeiris: And also, for airt and pairt of the steilling of ane gait¹ furth of the landis of Glencroe, in the moneth of October, the yeir of God I^m.Vj^c. tuentie tua yeiris: And in lyk maner, for airt and pairt of the steilling of ane blak horse out of Argyle, in the moneth of Merche lastbypast: And for thiftious steilling of ane scheip fra vmq^{le} Malcolme M^cfarlane, in Inner-fnamet,² in the moneth of Julij, 1616 yeiris. ITEM, the said *Johnne M^cInnair M^cfarlane*, ffor airt and pairt of the steilling of ane broun kow furth of the landis of Glencroe, furth of ane grit number of vther ky, in dryveing thame to the Mercat, to be fauld; committit a sevin yeir syne, or thairby: And ffor airt and pairt of the steilling of ane blak kow, a four yeir syne, furth of the saidis landis of Glencroe. ITEM, the said *Thomas Moir M^cfarlane*, sone to Duncane Dow, ffor airt and pairt of the steilling of fyve ky, pertening to George Maidlanes in Letter, and vtheris, the Laird of Kilsythes tennentis: And ffor airt and pairt of the steilling of nyne lambes, furth of Craigcoftane,³ pertening to Patrik Glas M^cfarlane thair, in the moneth of Junij, 1623 yeiris: And ffor airt and pairt of the thiftious ressetting of ane stowin kow, quhilk was stowin be Callum M^ccauise in Clakbowie, fra Colene Campbell of Ardkinglas, in the moneth of November, 1622 yeiris: And ffor ane commoun soirner⁴ and oppressour, vpone dyuerse his Maiesteis subiectis: And for common Thift and Resset of thift. ITEM, the saidis *Allaster Blair* in Bracherie, and *Johnne Blair*, his sone, ffor airt and pairt of the steilling of foure ky, furth of the landis of Discher, in Menteith, a

¹ Goat. ² Inversnaid?

³ Afterwards the residence of Rob Roy M^cGregor, who acquired this property in anno 1705. ⁴ One who oppressively takes free quarters, &c. by violence.

fyve yeir fyne, or thairby, quhilk pertenit to . . . Logane, fervand to the Laird of Auchinbrek. ITEM, the said *Allaster*, ffor the steilling of tua oxin fra the Laird of Buchannane, furth of the landis of Salloche, a fyve yeir fyne, or thairby. ITEM, the saidis *Allaster*, and *Johnne Dow Blair*, his sone, ffor the thiftious steilling of thre ky, furth of the landis of Drongie, pertening to Robert Campbell of Drongie, a foure yeir fyne, or thairby: And forder, for the thiftious recept¹ of tua stowin horse, stowin be the said Robert Abroche, furth of the North partis of this realme, a yeir fyne, or thairby. ITEM, the said *Allaster*, ffor the thiftious ressetting of ane grit quantitie of the guidis and geir reft, stowin, and away-tane furth of Balwill, be Robert Abroche, Johnne M^ccairtour, Donald Darleith, and vtheris thair complices, quhilkis pertenit to Johnne Fallasdaill, bailzie of Dunbartane: And last, the said *Johnne Blair*, ffor steilling of ane kow, furth of the landis of Clofrak, pertening to Parlen M^cneill, thair, a foure yeir fyne, or thairby. ITEM, the said *Johnne Gar M^cgilliemicheill*, ffor airt and pairt of the thiftious steilling, be way of Maisterfull Thift and Stouth-reiff, furth of Murray, in the North, fra dyuerse of the Inhabitantis thairof, in the moneth of Julij last, of ffyftie ffyve oxin and ky, with dyuerse horse, scheip, gait, insicht and pleniffing, quhilk war drewin² be the said Johnne Gar, and be Robert Abroche, his maister, and vtheris thair complices, to the Wast partis of this realme, quhair the samyn was fauld and disponsit vpone to thair vse: And siclyk, for ane commoun Soirner and Oppressour, in keiping daylie and nychtlie company with Robert Abroche M^cgregour, and passing with him throw dyuerse partis of the cuntrie, soirning and committing oppressioun vpone dyuerse his Maiesteis subiectis, inhabitantis thairintill; forceing and compelling thame to furneise meit, drink, and vther prouisioun, aganis thair will, and without payment of ony money for the same; in hie and manifest contempt of his Maiesteis auctoritie and lawis. ITEM, the said *Duncane Bayne M^ccartnay*, ffor ane commoun Soirner and Oppressour; specialle, for cuming to the duelling-hous of Neill M^cclaren in Innernandie, in the heid of Balquhiddel, in May last, and thair forcet and compellit him to furneise to the said Duncane, meit, drink, and vtheris necessaris; and becaus ane kid was refusit be the said Neill to be flane and eittan, at the said Duncanes defyre, the said Duncane thairupoun maist crewallie inuaidit the said Neill for his slauchter, gaif him ane crewall and deidlie wound in the heid, to the effusioun of his bluid in grit quantitie; quha, be occasioun of the said straik, being irritat with rage and furie, with ane grit caber³ in his hand, rynnand at the said Duncane in revenge thairof, strak Donald M^cIntyre (quha was ane redder⁴) in

¹ Reset.² Driven.³ A large rafter, beam, or joist.⁴ A peace-maker, who, in this instance, got the *redding-straik*, the proverbial recompense of those who, through their good nature, endeavour to separate angry combatants. The foregoing details afford a highly unfavourable picture of the state of society, in 'Rob Roy's country,' at the close of the reign of James VI.

the foirheid, and fellit and flew him thairwith; and sa, the said Duncane was airt and pairt of the Slauchter of the said vinq^{le} Donald McIntyre: ITEM, ffor cuming to the said Neill Mcclarens hous, vnder nycht, and steilling furth thairof of his haill inficht pleniffing, guidis, and geir, to the avall of fourtie pundis money.

The foirnamet haill perfonas, dilaitit and accuset of the crymes *respectiue* above writtin, haifing denyit the samyn to be of verritie, war put be the Justice to the knowlege of the perfonas following.

ASSISA.

Johnne Mcfarlane of Arrochar,	Duncane McInnoyer in Gortane,	Parlane McCorrie in Ardleifch,
James Garbraith in Garbell,	Patrik Roy McInnoyer,	Patrik Mcfarlane in Pullochre,
Dougall Mcfarlane in Tullichin-	Andro Mcfarlane in Drumfad,	Johnne Dow Mcfarlane,
taill,	Malcolme McWillame in Downe,	Donald Dow Mcfarlane,
Thomas Mcfarlane,	Duncane Mcfarlane in Port-	Harie Dow, feruitour to Johnne
Johnne Mcfarlane in Kenmore,	Chapell,	Erl of Mar, &c.
Duncane Mcfarlane, thair,	Johnne McInnoyer,	

VERDICT. The Assyse, all in ane voce, be the repoint and declaratioun of the said Andro Mcfarlane in Drumfad, chancellor, ffind the saidis perfonas on pannell, and ilk ane of thame, to be ffylet, culpable, and convict of the feuerall crymes aboue writtin.—SENTENCE. To be tane to the Burrow-mure of the burgh of Edinburgh, and thair to be Hangit quhill thay be deid; and all thair moveable guidis to be escheit to his Maiesteis vse, as giltie of the saidis crymes.

Sheep and Cattle Stealing, &c.

Jul. 21.—ADIE VSCHER, borne in Birkinhauch, in Liddisdail, fervand to Robert Ellote of Reidheuche.

Dilaitit of airt and pairt of the steilling of sex ky (*cattle*) furth of Schewingscheill-Castell, pertening to Williame Heroun of Chipchese, in the moneth of November last: ITEM, ffor airt and pairt of the steilling of sextene gaitis (*goats*) furth of Emmetischauch, pertening to Will Charletoun of Emmetischaugh; Will Vscher, his sone, being in cumpany with him at the steilling thairof; committit in September last: ITEM, ffor airt and pairt of the steilling of tua ky furth of Hasilfyde, in Ingland, the ane blak, the vther broun, pertening to Williame Chairletoun of Hasilfyde; committit be him and the said Will Vscher, his sone, in October last: ITEM, ffor airt and pairt of the steilling of an yellow brandit ox, furth of the landis of Heifilefyde, in the said moneth of October last, pertening to the said Will Chairletoun; the said Will Vscher, his sone, being in companie with him at the committing thairof: ITEM, ffor airt and pairt of the steilling of sextene gaittis furth of the landis of Leipieleifche, in October last; quhilk pertenit to Mathew Robfoun of Leipieleifche; the said Will, his sone, being with him at the steilling thairof: ITEM, ffor steilling and away-taking, about Hallowmes last, of tua schein

furth of Richartoun-fute, pertening to Archie Henderfoun, and Johnne Robie-foun, thair; committit be him and the said Will, his sone: ITEM, ffor airt and pairt of the steilling, furth of Burnemouth, of fyve scheip, pertening to Johnne Nixyne, thair; the said Will Vscher being at the steilling thair of: LAST, ffor airt and pairt of the steilling of fyve scheip, about St Thomas-Evin last, fra Johnne Ellote, callit *the Dod*, and Johnne Elliot, callit *the Gyde*: AND ffor commoun Thift and Refset of Thift.

PERSEWARIS, Mr (Williame) Heroun of Chipelese, Will Chairletoun of Hiffiesyde, Sir Williame Oliphant of Newtoun, kny^t, Aduocat.

ASSISA.

The Laird of Riddell,	Ragnell (Reginald?) Bennell,	Johnne Govane of Cardrono,
Williame Middlest of Chapell,	The Laird of Mertoun,	James Douglas of Cowthroppill.
George Ker of Newhall,	Andro Ker of Brounlandis,	Patrik Craufstoun of Corbie,
Andro Douglas of Priestfoun,	W ^m Trumble of Phillopehauche,	Robert Edger of Wodderlie,
Williame Bennet,	James Nayfmyth of Possfo,	Robert Lauder of that ilk.

VERDICT. The Assyse, all in ane voce, in respect of the said Adie his Judiciall Confessioun of the crymes foirfaidis to be of verritie, be the mouth of the said Laird of Riddell, chancellor, ffand, pronuncet, and declairit the said Adie Vscher to be ffylet, culpable, and convict of the crymes foirfaidis.—SENTENCE. To be tane to the Burrow-mure of Edinburgh, and thair to be Hangit quhill he be deid; and all his moveabill guidis to be escheit, &c.

Sheep and Cattle Stealing, &c.

Jul. 21.—WILL VSCHER, sone to the said Adie Vscher.

Being presentit vpon pannell, in prefens of my Lord Justice, Confessit him selff to be Giltie and culpable of the particular Thiftis contenit in his ffatheris convictioun: And offerit him selff in his Maiestie and Counfallis will for the samyn.—SENTENCE. The Justice, in regaird of the said Will Vscher his minoritie, nocht being past saxtene yeiris of age, with advyse of the Lordis of Secreit Counfall, ordanit the said Will to be Bancischet his Maiesteis haill dominions, and nocht to be ffund thairintill in ony tyme cuning, without his Maiesteis Licence, vnder the pane of deid, &c.

[*Sir George Erskine of Innerteill, kny^t, Justice.*]

Murder under trust—Stouthreis—Piracy, &c.

Nov. 3.—JOHNNE BROUN, skipper in Brunteilland; Robert Broun, mariner, his sone, thair; David Dowie, burges and awner thair; and Robert Duff, in South Quenis-fierrie.

Dilaitit and accuset of airt and pairt of the schamefull, crewall, and vnnuercefull Murthour vnder trust of thre Spanische mercheand young men; and steilling

and appropriating to thame felffis, be way of Maisterfull Thift, Southe-reiff, and Peiracie, off the guidis and mercheandice being within thair felipis-boddome, pertening to the faidis Mercheandis; committit a thre yeir fyne, or thairby, in thair cuming fra the Point of S^t Johnnes, in Spayne, to Callife, be casting the faidis thre Spanifche Mercheandis over-burde, and thaireftir appropriating of thair guidis and mercheandice to thame felffis, and making money thairof, to thair awin vfe.

PERSEWAR, Sir Williame Oliphant of Newtoun, kny^t, Aduocat.

DITTAY againſt the perſons on pannell.

JOHNNE BROUN, skipper in Bruntieland, maister and owner of ane quarter of the ſchip vnderwritten, ROBERT BROUN, your ſone, awner of ane vther quarter thairof; DAVID DOWIE, mariner, burges of Bruntieland, awner of the half thairof; and ROBERT DUFF, indueller and mariner in South Quenifferrie, YE ar indytit and accuſet, FORSAMEKILL AS the traffique and commerce betuix mercheand and mercheand, in expoirting of commoditeis frome ane cuntrie to ane vther, hes, in all weill-governet Kingdomes and Commoun welthis, bene eſtimat the ground and fundamentall caus, nocht only of grit welth and ritcheſ to the inhabitantis, but alſo ane grit help and furtherance to intertene freindſchip and correſpondence betuix Princes; quhairthrow mony loveabill Lawis, vpone guid advyſe and deliberatioun, hes bene publeiſt and ſet furth be thame and thair eſtatis, for advancement of thair tred, and reiking out of ſchipis and veſchellis for the better vphald and continuance thairof; and thairupoun, the art of Nauigatioun, with the perſones expert thairintill, alſweill for thair ſkill and dexteritie in ſailing, as fidelitie in that tred, be the ſaif convoying of the merchandis and paſſangeris, with thair merchandice and guidis, committit to thair truſt, hes becom famous and of goode eſtimatioun throw the hail world: LYK AS, the failleris of this Kingdome, being, for thair ſkill and fidelitie in that tred, nathing inferiour to ony vther cuntrie, people, or natioun, haif commonlie, in regaird thairof, bene ſa reſpectit be ſtrangeris in forayne partis, that thay, with thair ſchipis, hes bene preferrit in ſervice to ony vther people quhatſumewir. Nochtwithſtanding quhairof, it is of verritie, that ye and ilk ane of yow, ſchaiking of all feir of the Omnipotent and Almychtie God, regaird to the ancient goode fame of this cuntrie and kingdome of Scotland, quhairof ye ar namet maiſt vnworthlie to be inhabitantis and natiue borne people; as alſo, to the grit obloquy, ſchame and reproche, and oppin diſcredeit of the hail failleris of this kingdome reſortiſing to forayne partis, prejudice and diſapointing of all lauchfull commerce and tred with ony of the Mercheandis of the ſamyn, and imployment of the hail ſeafairing men with thair ſchipis and barkis in tyme cuming, a thre yeir fyne or thairby, ye being in S^t Johnnes, a Sie-point within the Kingdome and dominioun of Spayne, togidder with the ſchip callit, quhairof ye, the ſaid Johnne Broun, was maister and awner of ane quarter, and ye, the ſaid David Dowie, awner of ane half, and ye, the ſaid Robert Broun, awner of the fourt quarter; and being frauchtet be ane Gilzeane Thaſktone, a Spanzaird, to paſ fra the ſaid Point of S^t Johnes to the Point of Caillife, with ane laiding of Walnuttis, cheſtanis,¹ and certane Spanifche irne; and accoirding thairto, haifing tane in the ſaid laiding, togidder with thre Spanifche young men, quha war directed be the ſaid Mercheand to await vpone the diſcharge of the ſaid Merchandice, and to make mony thairof at the ſaid ſchipis arryvell at hir appointit Point aboue writtin,² ye, befor your cuming abuid of the ſaid ſchip in S^t Johnnes, plottit, contrivet, and devyſet the crewall and barbarous Murthour of the faidis thre ſtrangeris, and the appropriating to your felffis of the hail guidis and merchandice imput within the ſaid ſchip; and drew vp ane Band to that effect, quhairvnto ilk ane of yow, with the remanent equippage of the ſaid ſchip put to your handis; and thaireftir, cuming all aboird, heaſit vp ſaill, and paſt to the Sea: And being in the middis of Sea, far frae ony land, ye, vpone ſchamefull and damnable greid and covetouſnes, vpone ſet

¹ Chestnuts.

² As supercargoes.

purpois, deliberationn, and ffoirthocht fellony, fulfichilie apprehending that the al-feing eie of the Almychtie did nocht luik down, nor wald bring to licht your maist horrible and detestable Murthour and Pirracie, ye being also secundit, aidit, and assistit be James Hall in Kirkculdbrycht, Johnne Gibfoun in the Erles-fferrie, James Carrane in Tradache, in Ireland, Robert Kincavill, cuik of the schip, with ane Irische boy, namet Thomas Cur; all of yow, being nyne in number, within schip-buird, ye maist crewallie and vnnaturallie, aganis the Lawis of Nationes, haifing the saidis thre strangeris in your power, and for the vnlauchfull acqyreing and appropriating to your selffis of the saidis guidis and merchandice, violentlie, and but¹ pitie or commiseratioun, threw them all thre ouerbuid, ane estir vther, in the raging seas; and thairby crewallie and vnmerciefullie, vnder trust, credeit, and assurance, Murdreift and bereft thame of thair naturall lyves; thay haifing na refudge nor bak-dur to eschew your crewaltie: Quhilk being done, ye, in plane mokage² and skorne of the Almychtie, as gif his deryne Maiestie had approvin that your horrible fact, maid ane Prayer, and sang vp ane Psalme: And thaireftir, as Thevis and maisterfull Sea-robberis, divertit your curse fra Callise,³ and past with your said schip and laiding thairof to Myddilburgh in Zeilland, quhair the saidis walnuttis and chestanes war fauld and maid money of, be ane or vther of yow, in name and to the behuif of the haill company and equippage;⁴ and the samyn money, thaireftir, was pairtit amangis yow: Lyk as, the irne was brocht hame to Brvntieland, quhair the samyn was fauld, for reddie money.—Committing thairby maist horrible Murthour and Slauchter vnder trust and credeit, the saidis thre strangeris being vnder your power and command, within your schip; and lykwayis Maisterfull Thift, Stouthe-reiff and Pirracie, in appropriating of thair guidis and merchandice to your selffis: Off the quhilkis, ye, and ilk ane of yow, ar and war speciall actouris, airt and pairt; and thairfoir, aucht and fould, in maist exemplarie maner, be pwneift, to the terrour of vtheris.

My lord Aduocat, estir reiding of the Dittay, and the pannellis accusatioun of the saidis crymes, at length fet down thairintill; and that in respect na obiectioun was maid be the pannell or ony vtheris in thair names, aganis the relevancie thairof, desyret my lord Justice to put the samyn to the tryell of ane Assyse of the persones summond to that effect.

My lord Aduocat takis instrumentis of the sweiring and admissioun of the Assyse, and that na obiectioun is maid aganis thame be the pannell. And for Verificatioun of the poyntis of Dittay and crymes thairin mentionet, producet the Deposition maid be the foure persones on pannell, viz. the said Johnne Broun, Robert Broun, and Dauid Doweis Depositiones, maid be thame in prefens of the Laird of Bombie, the Commisfar of Kirkeculdbrycht, and the Bailleis thairof, vpone the xxviiij day of August last, confessing the Murthour and thiftious taking and appropriating of the guidis and merchandice to thame selffis. Togidder with the said Johnne Broun and Dauid Doweis Deposition, tane in prefence of the Erle of Melrois, vpone the xv of September last. Produces also the Depositiones of Robert Duff, tane in prefens of the said Erle of Melrois, on the vij day October last, beirand the said Johnne Broun, and Dauid Dowie, to be casters of the first Mercheand overburd. Produces the pannellis haill Depositiones maid be thame in prefens of my Lord of Melrois, vpone the nynt day of October last. Togidder with the Deposition of Robert Kincavill, cuik of the schip, and ane of

¹ Without.² Mockery.³ Calais.⁴ Crew.

the equippage thair of in that veadge,¹ tane in presens of James Weymes of Bogy, Vice-Admirall at Kirkcaldie, vpone the 28 of Junij last. With the Deposition of the said Robert Duff, maid in presens of my lord Aduocat him self, vpone the 27 of October last. And last, vses and produces the Declaratioun of Robert Meluill and Robert Cellok, vnder thair hand-writt and mark put thairto, detecting and oppening vp the pannellis giltienes of the haill poyntis contenit in thair Indytment. And vpone the production of the verifications aboue writtin, askit instrumentis : And protestit for Wilfull-Errour aganis the persones of Assyse, gif thay acquit the pannell of the detestable crymes aboue written.

VERDICT. The Assyse, all in ane voce, be the repoir and declaratioun of Stewin Philp, elder, mercheand in Dyfert, chancellor, ffand, pronuncet, and declairit the haill foure persones on pannell to be Giltie, culpable, and convict of the crymes aboue specifeit.—SENTENCE. To be tane to the Mercat-Croce of Edinburgh, and thair to be Hangit vpone ane gibbet, quhill thay be deid : And thaireftir, thair heidis to be strukin fra thair bodeyis : And tua of them to be fet vp vpone prikis of irne at *Leith* ; and the vther tua to be sent to *Brunteiland*, to be fet vp vpone prikis thair : And thair haill moveabill guidis to be escheit to his Maiesteis vse.

[*Mr Alexander Coluile, Justice-Depute.*]

MURDER, &c.

Nov. 13.—HARIE LISTOUN, indueller in the bak of Plesance (of Edinburgh), callit the Bak-Raw.

Dilaitit, fforfamekill as the said Harie, haifing, without ony iust caus, confauet ane deiddie haitrent and evill will against vmq^{le} James Mayne, seruitour to Robirt Young, maltman, burges of Edinburghe, with ane settillit purpois and resolution to bareiff him of his lyffe, be on meine or vther ; laitlie, vpone the last day of August lastbypast, come in the twielicht, eftir setting of the sone, betuix sevin and aucht houris at evin or thairby, to the said Robert Young, his peise-land, besyde the Seanis,² near to the Burrow-mure of the said burgh, quhair the said vmq^{le} James was in sober and quyet maner for the tyme, keiping his said maisteris peise, and vtheris his coirnes, than growand and standing stoukit³ vpone the ground of the saidis landis ; and thair, the said Harie, being bodin with ane grit rung or battone in his hand, and with knyves and vtheris invasiue wappones, first vpbraidit the said James Mayne with woirdis, alledging that he was ane commoun Theiff, and had stowin ane grit number of the said Harie his beanes and peise, growand neir to the said Robert Youngis land, and lyand contigue

¹ One of the crew in that voyage.

² Sciennes, so called from a religious house dedicated to St Katherine of Sienna, in the immediate vicinity of Edinburgh.

³ Cut down and put up in stouks, ricks, or shocks.

thairto ; and thaireftir, becaus the faid James purget him felff of that calummie, and anfuert him, be woird, that he was als honeft as him felff ; the faid Harie, thairupoun, ran vpone the faid James, and rwfchet him (being ane aget man of threfcoir fourtene yeiris of age) to the grund, dang him in the heid, craig,¹ fchoulderis, and fydis with the faid battoun, lap vpone his breift and bellie with his feit and kneysis, punchet him as alfo vpone the heart, and thairby brak and birket his intrallis and noble pairtis ; in maift infolent maner cuttit his cleithing in peices with knyves, and thaireftir harrellit and drew him be the heillis the fpace of ane quarter of ane myle af the faidis landis, to ane laich volt in S^t Geillie Grange, and impriffonet him thairintill, *tanquam in privato carcere*, he being in the deid-thraw :² Lyk as, within thre houris efter his imputing within the faid volt, he deceiffit of the faidis ftraikis : And the faid Harie, vnderftanding of his daith, to fuppres the Murthour of the faid puir man fra the world, caufit him to be bureit fecreitlie in the nycht, in ane obfcure place. And fa, the faid vinq^{le} James Mayne was fchamefullie, crewallie, and barbarufflie Murthouret, and thairefter fecreitlie bureit, be the faid Harie and his complices ; and he is airt and pairt thairof ; committit vpone fet purpois, prouiffoun, and foirthocht felony.

PERSEWARIS.

Jonet Watfoun, the relict ; Euphame Cuninghame, fifter-dochter ;³ Sir Williame Oliphant, knycht ; Robert Young, as maifter.

PRELOCOUTOURIS in defence.

The Laird of Innerleyth, The Laird of Lugtoun, Mr Lueis Stewart, and Mr Johnne Oliphant, Aduocatis.

It is allegit be the pannell, and be Mr Lueis Stewart, his prelocoutour, eftir reiding of the Dittay, that the famyn is nawayis relevant to pas to the knawlege of ane Affyfe, as it is fett down ; nawayis affirmeing thairin, that the pannell was the actuall committer of the flauchter lybellit ; and fua, nocht concludand, *de homine occifo*, the famyn can nocht pas to ane Affyfe.—It is anfuert be my lord Aduocat, the allegiance aucht to be repellit, in refpect of the Dittay beirand *per expreffum*, that the defunct reffaut dyuerfe ftraikis with ane battoun in the heid, and was punchet in the breift and bellie, and his hail noble pairtis brokin within him ; and be occaifioun thairof the defunct deceiffit ; quhilk was gevin to him be the pannell, and that he deceiffit off the famyn ftraikis gevin to him be the pannell, the tyme lybellit.

It is allegit, that the Dittay contenis dyuerfe and feuerall⁴ memberis, ilk member thairof being ane cryme be the felff, viz. firft, that the defunct was ftrukin with a battoun : 2. His claithis cuttit with knyves : 3. The defunct was harrellit be the heillis af the landis lybellit, to the Grange : 4. Was caffin in ane laiche volt, *tanquam in privato carcere*, quhairin he was detenit captiue and priffoner ; quhairin, it is affirmet, that the defunct deceiffit : Quhilkis, being feuerall crymes,

¹ Throat ; neck² Half dead ; in the *throes*, or agonies, of death.³ Niece.⁴ Separate.

man (*must*) be discuffit feuerallie. The Aduocat declairis that he conjoynes the haill crymes togidder, and devydis na pairt of the Dittay; and sayis, that the samyn is verrie relevant, as it is fet down, to pas to the knowlege of ane Assyse.

It is allegit be the pannell, that the samyn can nocht pas to ane Assyse, becaus he offeris him to prove, be sufficient Witnesfes present at the bar, that the said James Mayne deceiffit be hanging himselff within ane laiche volt in the Grange, eftir he was committit thairin for steilling of certane beanis and peife, and eftir he had remanit thairin the fpace of tua or thre houris; quha was brocht thairto, frie of ony hurt or woundis, in ony pairt of his body.—It is anfuerit, aucht to be repellit, in respect the allegiance confisting *in facto*; and gif ony probatioun be tane, it man be proponit to the Assyse, quha, for thair informatioun, may tak the Witnesfes declaratioun, gif thay fall think it expedient, or reject the samyn.¹

THE JUSTICE Ordanis the Dittay to pas to the knowlege of ane Assyse: And the exceptioun proponit be the pannell, anent the defunctis putting handis in him selff, feing it consistis *in facto*, REMITTIS THE TRYELL THAIROF TO THE ASSYSE; AND THE PROBATIOUN TO BE VSET BEFOIR THAME.

ASSISA.

Mr Johnne Cant of the Grange,	Johnne Stevinfoun, maltman,	Robert Wilfoun, beltmaker,
Johne Marfchell, burges of Edr,	Johnne Lowrie, maltman,	James Johnnestoun, maltman,
Adame Marfchell, maltman thair,	Adame Bar, tailzeour,	Frances Stevinfoun, chirurgane,
Johnne Campbell, ftaibler thair,	Robert Moubray, fuordflipper,	Johnne Fluiker, chirurgane,
Johnne Bordland, litfter,	Johnne Ahannay, baxter,	Johnne Clarkfoun, fmyth.

It is allegit be the pannell aganis ffrances Stevinfoun and Johnne fluiker, chirurganes, that nather of thame can be admittit vpone this Assyse, becaus thay haif behavet thame selffis as pairteis, in passing, at the defyre of the perfewaris, and for guid deid gevin to thame, to the defunctis graiff, fevin dayis eftir his buriall, and taking him vp and fichting the deid corporis, ffor ane pre-

¹ This Case is most important, as being the first on Record, where the Lord Advocate voluntarily admits of WITNESSES being examined before THE ASSISE, in relation to facts arising out of the assertions contained in the Dittay. The practice formerly was for the Advocate, as public prosecutor, previous to framing the Dittay, to examine the pannell and such witnesses as could be obtained, immediately after the commission of the crime, before the Lords of Privy Council, or a Commissioner; and the Declarations, Confessions, and other evidence so produced, were founded upon in Court. They were there held as conclusive, and not liable to be redargued by leading of fresh evidence at the time of the Trial. The want of attention to this circumstance, or rather the ignorance of the ancient mode of procedure in matters Criminal, would induce any one, at first sight, to form a very erroneous estimate of the policy, and more particularly of the administration of our Laws. The notion seems anciently to have been, that it was an act of flagrant contempt in a pannel to dispute the validity of the evidence led before so high a tribunal as that of the Privy Council, and probably in the face of his own repeated Confessions or Declarations, on being examined, previous to trial. The Justice, therefore, repelled any attempt on the part of Counsel for the pannel bringing forward Witnesses in proof of his innocence; until, at length, the voice of the country prevailed, and THE ASSISE WERE MADE JUDGES OF THE LAW AS WELL AS OF THE FACT. It is not a little singular to observe here, that one of the Assise (the very Justice of the Peace in the vault of whose house the alleged suicide took place, and who was afterwards chosen Chancellor of the Assise) is brought forward as the principal evidence, along with three of his servants!

cognitioun in fauouris of this perfewar, anent the tryell of this mater.—It is anſuerit be the Aduocat, the allegiance is nawayis relevant to ſtay thame to be admittit vpon this Affyſe; becaus, quhatevir was done be thame in raiſeing and ſichting of the corporis, was done be command of the Bailleis of Edinburghe.

Robert Young, perfewar, being ſuorne, gif he has juſt cauſe to perſew this Dittay as it is ſett down, declairit, that he has juſt cauſe to perſew, vpon this reaſone only, becaus he, haifing gottin knowlege of James Maynes daith, and cuming to the Grange to vnderſtand the forme thair of, and haifing ſeane the deid corporis, deſyret Mr Johnne Cant to keip him vnbureit quhill the morne at nyne houris, that his wyfe and freindis (nicht) come to ſie him; quhilk the ſaid Mr Johnne promeiſt ſould be done; and nochtwithſtanding thair of, he was bureit, be the pannellis ſervandis, lang befor ſex houris in the moirning: And thairfor, in reſpect of his buriall, ſecretly, by¹ promeis, he had juſt cauſe to perſew the pannell, as gilty of the ſaid James Maynes daithe.

The Aduocat takis inſtrumentis of the ſueiring of the Affyſe, and of the production of the defunctis claithes be the relict, all cuttit be the pannell, the tyme contenit in the Dittay: And proteſtis, in caice thay acquit, for Wilfull Errour.—The pannell proteſtis in the contrair, gif thay fflye; and that the Witneſſes may be tryit for preving that the only cauſe of the defunct his daithe proceedit fra his putting violent handis in his awin perſone, be his feirfull and crewall hanging him ſelf, and thairby deuoiring him ſelf to daith, within ane laich volt of the Grange, pertening to Mr Johnne Cant, ane of the Affyſe, eftir the pannell had apprehendit him in his peiſe, and tane him with tua grit wallat-full of ſcheillit beanis, ſtowing be him at his peiſe-rig, and brocht him to the ſaid Mr Johnne Cant, as Juſtice of Peace, to haif remanit with him vnto the tyme he had bene tryit and pwneift for the ſaid Thift. And for cleiring of the veritie of the foirſaid allegiance to the ſaid Affyſe, deſyret the Witneſſes following, all preſent at the bar, viz. the ſaid Mr Johnne Cant, ane of the Affyſe; Robert Stark, James Scott, and James Wallace, his thre ſervandis; James Borthuik, indueller in Edinburghe; James M^cCorne, in the Seanis; Williame Mure, ſervand to Robert Young, ane of the perſewaris, and Johnne Girdwoid, alſo his ſervand, to be callit vpon and examinat be the ſaid Affyſouris, eftir thair incloifeing.²

VERDICT. The ſaidis perſones of Affyſe thaireftir removet altogidder furth of Court to the Affyſe-houſe, quhair, be pluralitie of voittis, thay electit and chuifet the ſaid Mr Johnne Cant in chancellor: And thaireftir, the ſaidis hail

¹ Contrary to.

² This ſeems an extraordinary ſtep. The Aſſiſe, *after they are enclosed* in the Aſſiſe-houſe, call before them and examine the Witneſſes offered, without the direction of the Judge, or the interrogation of Counsel for either party.

WITNESSES being fuorne and examinat be thame, thay all, but¹ discrepance, cleir-
lie verifeit be thair declarationes, that the said James Mayne come vpon his feit,
without ony hurt, as appeirit, in ony pairt of his body, to the Grange, a littill
afoir sex houris at evin, the day contenit in the Dittay, being brocht thairto be
the pannell, for the cause contenit in his exceptioun; and being put in the laich
volt, at the defyre of the pannell, to be keipit thairin be the said Mr Johnne
Cant, as Justice of Peace, vnto the tyme he war tryit, and that Robert Young,
his master, war brocht to that effect; he, within tua houris thaireftir, the volt
dur being lokit vpon him, was fund hingand in tua horse girthes or coirdes,
deid, and his mouth fameand;² and thairby, that he had devoiret³ him selff. Eftir
quhais tryell and examinatioun, the saidis personis of Affyse reffonit and voittit
vpon the poyntis of the said Dittay, and being ryplie and at lenth advyset thair-
with, togidder with the DEPOSITIONES aboue writtin, maid be the saidis WIT-
NESSES, thay re-enterit agane in court, quhair thay all, in ane voce, be the repoint
and declaratioun of the said Mr Johnne Cant, chancellor, ffind, pronuncet, and
declairit the said Harie Liftoun to be Cleane, innocent, and acquit of the slauchter
and murthour of the said James Mayne; and of airt and pairt thairof.

Quhairvpoun the said Harie Liftoun and his prelocutouris askit instrumentis.

Incest.

Nov. 19.—JAFFRAY IRWING of Robgill.

Dilaitit of the filthie and detestable cryme of Incest; committit be him with
Agnes Cairletoun, spous to vmq^{le} George Irwing of Bonshaw, his brotheris
wyfe; quha buir to him, in that filthie copulatioun, thre sones, namet Frances,
George, and Edward Irwingis, and ane dochter; quhilkis war all baptizet in
Ingland; contrair the tennour of the Actis of Parliament.

My lord Aduocat takis instrumentis of the pannellis Confessioun; and pro-
testis for Wilfull Errour, gif thay acquit.

VERDICT. The Affyse, all in ane voce, in respect of the said Jaffra his Judi-
ciall Confessioun, ffind, pronuncet, and declairit, be the repoint and declaratioun
of Raulff Ker, burges of Lauder, chancellor, the said Jaffra to be ffylet, culpable,
and convict of the said cryme of Incest, contenit in his Dittay.—SENTENCE.
To be tane to the Mercat-croce of Edinburghe, and thair his heid to be strukin
from his body; and all his moveabill guidis to be escheit, &c.

¹ Without difference in their testimony.
devorare.

² Foaming, or frothing.

³ Destroyed. Lat.

GENERAL APPENDIX.

APPENDIX.

* * * SINCE the preceding Volumes were sent to Press, various important PAPERS having been discovered by the Editor, illustrative of facts narrated in the Trials, it has been thought proper to preserve a selection from them in this APPENDIX.

No. I.

PAPERS RELATIVE TO THE DEADLY FEUD BETWEEN THE EARLS OF EGLINTON AND GLENCAIRN, &c.

I. LETTER, *the King to the Privy Council, 'for tryall of the authouris of the Conflict betuix Erle of Glencairne and the Maister of Wintoun, at St Johnestoun.'*¹ August 6, 1606.

RIGHT trustie and welbelouit Cousins and Counselloris, We greet 3ow well. The report of that broyle whiche did fall furth in THE TOUN OF PERTH, betuix THE ERLL OF GLENNCAIRNE and THE MAISTER OF WINTOUN, immediatlíe befor the last sessioun of Parliament keipit thair, did offend ws muche; speciallie, in respect of þe circumstances of þe tyme and place, quhen as, (beside the greit hazard in bringing many of THE NOBILITIE then present in the toun, to haue enterit in blood with vperis, and thairby to haue revied that new mortified monstres of DEIDLIE FEED,) it wes a reddie way to haue flayit the progres of þat sessioun of Parliament, to þe greit preiudice and hurt of þe Estait, and to þe hinderances of all our services thair. Qulhairvpoun, We ar moved the moir ernesstlie to desire the knowlege of þe beginning of þe misdemeanour, and qulhairvpoun the famin proceidit, and whiche partie wes first author thairof. And thairfoir, have thocht meet, heirby, to will 3ow to tak particuler tryell befor 3ow of þe first beginning of that truble, how the famin fell furth, and whiche of the tuo pairteis began the invasioun; and thairwith to try, whidder it wes vpoun a precogitat or foir-thocht intentioun, or if þe same fell furthe be mere accident, or *chaud mêle*, vnintendit be ony of the tuo pairteis against the vper? And heirof, willing 3ow to certifie ws, particularlie, of the whole trenth of that matter, in all the circumstances of the famin, oure plesour is, that, in the mein tyme, specialle directioun be gevin be 3ow to OUR JUSTICE GENERALL, HEICHE CONSTABLE, or thair deputies, or to ony vper Judges appointed by Commissioun to proceid criminallie in the tryall of that matter, to

¹ From *MS. Collection of State Papers*, by Sir Thomas Hamilton, afterwards Earl of Melrose and Haddington.

defert all dayis, and to suspend and continew all proceffes intendit befor thame be ony of these pairteis againt vper, ay and quhill our forder plefour be signifeit vnto thame, efter We haue dewlie confiderit the tryall taikin be 3ow in that matter. And so We bid 3ow richt hairtlie fairwell. FROM our Manowr of GREINWICHE, pe 6 of August, 1606. [JAMES R.]

To our trustie and welbelouit cousins and counsellouris, THE ERLL OF DUMFERMLING, our Chancellour, and remanent Lordis and vperis of our COUNSALL OF ESTAIT, in oure kingdome of Scotland.

II. LETTER, *the Privy Council to the King, as to Deadly Feud between the Earls of Eglinton and Glencairn, and Lord Sempill, &c.*¹ Aug. 27, 1606.

MOST SACRED SOUERANE,

ACCORDING to 3our hienes directionn, signified vnto ws by 3our MA^{TIES} faithfull counsellour THE ERLL OF DUMBAR, we did call and conuene befor the Counfell the ERLIS EGLINTOUN and GLENCAIRNE, and THE LORD SEMPILL, with a nwmer of thair freindis, whome we knew to haue cheifest interes in the present FEED standing betuix thame, and efter that we had declairit vnto thame the greit paines and travellis whiche 3our sacred MAIESTIE took in 3our awin persone, for extinguischeing of the name and memorie of DEIDLIE FEEDIS, what good succes had followed vpoun 3our MAIESTIES travellis, in sum of the greittest FEEDIS of this kingdome, and how that 3our MA^{TIE} had now recommendit vnto THE COUNSELL the removing this FEED, whiche hes bene of so long continuance, and be resoun of pe minoritie of THE ERLL OF EGLINTOUN could not whill now tak effect, we burdinit thame with a Submissioun, conforme to the Act of Parliament. The ERLL OF GLENCAIRNE pretendit that thair wes a quarrell betuix him and EGLINTOUN, and that a Submissioun wes vnecessar; and, in end, he directlie refuist to submitt, becaus the Submissioun imported aganis him of the Slauchter of vmq^{le} THE ERLL OF EGLINTOUN, which he wald never tak vpoun him; bot offeris him redly to tak tryall of the lawis for that Slauchter; whiche tryall, in his pairt, aucht to preceid the Submissioun. We rememberit him of ane Submissioun subferyvit be himself in this sam matter, agreable, in evrie word, to that whiche wes now desirrit when this matter wes last in handis afor THE COUNSELL, in Februar 1604. Bot he, standing vpoun his innocencie of that Slauchter, refuist to submitt. EGLINTOUN maid no refusall, bot pretending some excuse vpoun the schortnes of the wairning, he only craved a continuatioun to be advisit with his freindis, becaus this wes the first tyme that ever he wes chairgit in this matter, for his MAIESTIE; and THE LORD SEMPILL verrie frelie, for 3our MA^{TIES} satisfacioun and obedience, without ony ceremonie, offerit to submitt. We have grauntit vnto EGLINTOUN, with his awin consent, the 20 day of November nixt, to be advyfit with his freindis, and to come prouydit in this matter. We have no assurance of THE ERLL OF GLENCAIRNES obedience, bot we hope that he will conforme himself to 3our MA^{TIES} plefour: And THE LORD SEMPILL will be obedient.

We had lykwayis in hand the proces of GLASGOW, whairin we haue fund verrie greit infolence and ryatt committit be MYNTO and a number of the commonis of the toun; and hes committit the personnes guiltie to waird within the burgh of Linlithgow, whill 3our MA^{TIES} plefour be knawin.

This is all we haue done at this meiting, wherof we haue thocht meet to mak 3our sacred MA^{TIE} acquainted; to the effect 3our hienes may give directionn thairin, as 3our MA^{TIE} fall think good; which we fall prosequute and follow out. And sua, praying God to blis 3our sacred MAIESTIE with a long, happy, and prosperous reigne, We rest

3our Ma^{ties} maist humble and obedient subiectis and servandis.²

LYNLITHGOW, 27 of August, 1606.

¹ From the same *MS. Coll.* as the preceding. *Hamilton*, in his transcript.

² The subscriptions have not been transcribed by *Sir Thomas*

No. II.

SOCIETIE AND COMPANIE OF THE BOYES.

LETTER *from the Privy Council to the Marquis of Huntly.*¹ Jan. 20, 1607.

EFTER our verry hairtty commendationis to 3our good lordschepis, We ar informed of a verry greit infolencye begvn and lyk to grow to a greiter heicht within the boundis of 3our ll. office be JOHNNIE GORDOUN, *callit of Geyche*, ... FORBES *of Corfindae*, PATRIK M^cINNEIR, and sum vperis, quho, having affociat vnto thame feluis ane number of dobofchet and lawles lymmeris, calling thame feluis YE SOCIETIE AND COMPANY OF BOYES, thay haue most vnlauffullie and feditionuslie bund thame feluis in ane fellowfchip, with aithis, vowis, and protestationis of mutuall defence and perfute; and pat euery one of pair quarrellis falbe comoun to all; and that the purpose and interpryse of ony one of thame falbe prosequuted, bakkit, and followed out, be the hale SOCIETIE, against all and quhatfumeuir, without respect of persouns. Lykas, thir same lymmaris keipis thame selfis togidder, committing oppin and avowed reiffis, heir-schippis, and vperis enormities, in all pairtis, quhair thay may be maisteris and commaunderis. QUHILK proud and detestable attempt, as it is odious to be hard of in a peceable estait, subiect to a PRINCE whome GOD hes airmitt with power and force able to suppress the same; so the same caryes with it no lyttill sclander and preiudice to your ll. honour and credit, that within 3our boundis, quhair 3our ll. may commaund, such ane handfull of lymmaris dar presume to attempt suche interpryses; and We ar certane pat the knowledge heirop being broght to HIS MA^{TIE}, will mak his hienes wonderfullie till admeir 3our ll. long patience and connivance, in not apprehending, punisheing, and suppressing of thir lymmaris; and quhat constructionis may be maid heirvpone to HIS MA^{TIE} against 3our ll., we remitt to 3our ll. consideration. Alwayes,² we ar heirby to requiest and desire 3our ll. that, with all convenient speed, 3ow tak ordour for apprehending of the saidis persounes, and some vperis THE CHYFTANES of that laules SOCIETIE, and put thame heir befor THE COUNSELL; and that 3our ll. prosequute *with fyre and sword* the haill rest of thair followaris, and never leue of pe perfute of thame whill they be apprehendit, pvnish, and altogidder suppress; as 3ow respect HIS MA^{TIES} seruice, the peace of pe cuntry, and 3our awin credite, honour, and reputation, and as 3our ll. wald eschew that hard censure and construction which HIS MA^{TIE} man³ mak of 3our behaviour, in this point. Sua we commit 3ow to God. FROM EDINBURGHE, pe 20 of Januar, 1607.

To our verry honourable good Lord, THE MARQUISE OF HUNTLY.⁴

No. III.

TRIAL OF THE MURES OF AUCHINDRANE.⁵

LETTER, *the Earl of Cassillis to the King.*⁶ Dec. 3, 1608.

MAIST SACRED SOUERANE,

IT may pleis 3our gracious MA^{TIE}, I hane taikin this bauldnes, vpone the farder tryall of the

¹ From *Haddington's MS. Coll.*

² Nevertheless; at all events.

³ Must.

⁴ A Letter from the

Privy Council, 9th Feb. 1608, directs him, by HIS MAJESTY'S command, between and Mar. 10 next, to prepare to depart out of the kingdom; and to give assurance for discharge of his offices, during his absence.

⁵ See this

Collection, III. 121, &c.

⁶ From *Dennyline MSS.* Adv. Library.

trechrous MURTHOURIS of my vncle THE LAIRD OF CULZEANE, and of the boy¹ quha careit the Lettir of his dyett, committet be THE LAIRD OF AUCHINDRAINE and his sonne; and now farder cleirit, be the greit paine and cayr of MY LORD CHANCELARE, quha hes broicht them to sik contrarietie in thair DEPOSITIONIS, that all indifferent men may be perswadit off thair guyltines of bayth thais Murthouris. Nochtwithstanding quhairof, thai still continew in ane denyall. I wald maift humelie befeik your MATIE that it micht be your MATIES gracious plesoure to graunt ane WARRANT to THE CHANCELLER and COUNSALL OF SCOTLAND to PUTT thame to YE BUITTIS,² quhairthrow thai may be broicht to þe mair evident Confessioun. So, maift hartlie vyffing your MATIES lang prosperitie and happinefs for euer, I remane,

Your MA. maift humbill seruant and subiect,

EDINBURGHE, the thrid of December, 1608.

CASSILLIS.

To THE KING his maift excellent MAIESTIE.

No. IV.

PAPERS IN FARTHER ILLUSTRATION OF THE TRIAL OF MR THOMAS ROSS.

(See Vol. III., p. 445.)

[THE circumstances attending the Case of MR THOMAS ROSS are so very remarkable in their nature, that it was deemed proper to institute a still more rigorous search after the grounds and Warrants upon which his almost unexampled Trial was founded. After having carefully examined the Acts of the Privy Council, and many other authentic sources, the Editor has the satisfaction of having at length discovered the identical copy of his Trial, which had been transmitted to Court, for the information of KING JAMES VI. Besides the proceedings which have already been printed, it contains a translation of the offensive THESIS and ANNEXA, which, as has already been seen, were ordered to be taken up by the public prosecutor, and upon no account to enter the Records. Annexed to it are the DEPOSITIONS of the unhappy man, which, in expectation of a free pardon, he voluntarily emitted before the Privy Council of Scotland. The original draught of the KING's Letter to the Secret Council, to bring him to Trial and execution; and, in compliance with the King's known wish, their cruel recommendation, that Ross should suffer an ignominious death, have also been obtained. These interesting documents were found in a Volume of *Sir James Balfour's* invaluable *MS. Collections*, in the Advocates' Library, which had accidentally been mislaid when the Editor conducted the former enquiry.

The reader has here the painful satisfaction of finding, that the conduct of KING JAMES and his COUNCILLORS was still more inexcusable than had at first been conjectured. It is now clearly proved, beyond the shadow of a doubt, that the PASQUILL, or THESIS in question, had not been *printed* or industriously *disseminated* by its unhappy author; but that it had merely been affixed on the door of the College,—that, *de facto*, no person had read it, excepting the Vice-Chancellor of Oxford, to whom it had been brought by a student,—that this student, instantly on the Thesis having been hung up, had only perused a few lines of the Paper, and brought it, without delay, to his superior,—and that, after the examination, confession, and imprisonment of Ross, the Vice-Chancellor had transmitted the THESIS to Court, requesting instructions how the poor man should be disposed of.

¹ William Dalrymple.

² The torture of the boots. The younger Auchindrane was put to the torture, which he bore with remarkable fortitude.

That Ross was *insane*, as well as in the most abject poverty, there can now be no doubt. Altogether, indeed, his Case is one of the most pitiable on record.

It only remains to the Editor to state, that he is indebted to GEORGE SMYTHE, Esquire, Advocate, for the following authentic information, regarding THE FAMILY OF ROSS of Craigie, at and shortly previous to the period of Mr Thomas Ross's execution, Sep. 10, 1618. Such additional notices and evidence as have fallen under the Editor's observation are inserted in the foot-notes, along with the verifications of Mr Smythe's memoranda.

‘ I. JOHN ROSS OF CRAIGIE appears to have been the father of (1.) *John Ross* of Craigie. (2.) *James Ross of Creytoun*, who acquired certain lands at the East end of Forgundenny from Walter Oliphant of Newton, in Feb. 1539.¹ He married *Marjory Stewart*; by whom he left a daughter, *Janet*,² who married Patrick Lyndsfay of Dowhill.³ (3.) *Thomas Ross of Maitlands*, who was killed at the battle of Pinkie.⁴ *Grissell Duncanson*, his relict, afterwards married Alexander Crichton of Forgound.⁵ His son, *James*, was killed in an affray with the Oliphants, Nov. 12, 1571.⁶

‘ II. JOHN ROSS OF CRAIGIE was infeft in the Lands of Hilton Malar, Sep. 17, 1539.⁷ He was served Tutor-at-law to *Janet Ross*, his niece, Mar. 17, 1543.⁸ He is mentioned by KNOX, in his History of the Reformation,⁹ along with “the pensionars of the Prelates, Oliver Sinclair, and utheris, who were faithful to them in all things,” and informed them of all proceedings at Court. He married *Isobel Liddell*,¹⁰ who had previously borne a number of children to Patrick Hepburn, Bishop of Moray, so notorious for his gallantries. He was killed at Pinkie, and left four sons and three daughters.¹¹ (1.) *Thomas*. (2.) *John*. (3.) *James*, who had a Charter of the Lands of Pitheveles to him and *Catharine Mcgie*, relict of umql^e Alexander Menzies of that Ilk, his spous, Apr. 7, 1566.¹² He afterwards married *Janet Robertson*, relict of umql^e Thomas Fowlis, burges of Perth.¹³ He left no issue; for his brother, *John*, was served heir to him, Nov. 3, 1582.¹⁴ (4.) *William*. (5.) *Barbara*. (6.) *Alison*. (7.) *Grissell*.

‘ III. THOMAS ROSS of Craigie married *Jean Hepburn*; by whom he had one daughter, *Margaret*,¹⁵ who married John Seytoun, apparent of Lathrisk. Jean Hepburn was infeft in the lands of Hilton Malar, in liferent. After the death of Thomas Ross, she married Peter Oliphant of Turings.¹⁶

‘ IV. JOHN ROSS of Craigie succeeded, as heir of entail, to the lands of Craigie, upon the death of Thomas. He married *Agnes Hepburn*; and had by her, (1.) *Patrick*, who married *Beatrix Charterhouse* (*Charteris*). She was infeft in the lands of Hilton Malar, in liferent, Apr. 9, 1575.¹⁷ After his death, which took place before that of his father, his relict married Robert Leckie, apparent of Kypdarroch.¹⁸ (2.) *Mr Robert Ross*,¹⁹ who was infeft in the estate of Craigie, and was designed “fiar of Craigie” before his father's death, which took place about 1601.²⁰ He married *Margaret Eriot*. He seems to have sold the lands of Craigie to Mr David Moncreif, son of William Moncreif of that Ilk, before 1620. (3.) *Mr Thomas Ross*, the unfortunate subject of the preceding Trial. (4.) *Andrew*.²¹

¹ *Sheriff Records of Perthshire*, Jan. 12, 1573.

² May 20, 1588, James Lindsay, apparent of Dowhill, was served heir to *Janet Ros*, his mother, in a piece of land and orchard in the barony of Forgundennie; and fishing in the Water of Earn.—*Inquisit. Retorn.* Perth, (1055.)

³ *Sh. Rec.*, Jan. 12, 1573.

⁴ *Ibid.* Jan. 12, 1573.

⁵ See this Collection, I. 25.

⁶ *Sh. Rec.*, Mar. 14, 1550.

⁷ *Sh. Rec.*, Jan. 12, 1573.

⁸ *Ibid.* Jan. 5, 1549.

⁹ *Ibid.* Apr. 22, 1573.

¹⁰ *Ibid.* Apr. 22, 1573.

¹¹ *Ibid.* Apr. 22, 1573.

¹² *Ibid.* Apr. 22, 1573.

¹³ *Ibid.* Apr. 22, 1573.

¹⁴ *Ibid.* Apr. 22, 1573.

¹⁵ *Ibid.* Apr. 22, 1573.

¹⁶ *Ibid.* Apr. 22, 1573.

¹⁷ *Ibid.* Apr. 22, 1573.

¹⁸ *Ibid.* Apr. 22, 1573.

¹⁹ *Ibid.* Apr. 22, 1573.

²⁰ *Ibid.* Apr. 22, 1573.

²¹ *Ibid.* Apr. 22, 1573.

²² *Ibid.* Apr. 22, 1573.

²³ *Ibid.* Apr. 22, 1573.

²⁴ *Ibid.* Apr. 22, 1573.

²⁵ *Ibid.* Apr. 22, 1573.

²⁶ *Ibid.* Apr. 22, 1573.

²⁷ *Ibid.* Apr. 22, 1573.

²⁸ *Ibid.* Apr. 22, 1573.

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³ *Sh. Rec.*, Jan. 12, 1573.

⁴ *Ibid.* Jan. 12, 1573.

⁵ See this Collection, I. 25.

⁶ *Sh. Rec.*, Mar. 14, 1550.

⁷ *Sh. Rec.*, Jan. 12, 1573.

⁸ *Ibid.* Jan. 5, 1549.

⁹ *Ibid.* Apr. 22, 1573.

¹⁰ *Ibid.* Apr. 22, 1573.

¹¹ *Ibid.* Apr. 22, 1573.

¹² *Ibid.* Apr. 22, 1573.

¹³ *Ibid.* Apr. 22, 1573.

¹⁴ *Ibid.* Apr. 22, 1573.

¹⁵ *Ibid.* Apr. 22, 1573.

¹⁶ *Ibid.* Apr. 22, 1573.

¹⁷ *Ibid.* Apr. 22, 1573.

¹⁸ *Ibid.* Apr. 22, 1573.

¹⁹ *Ibid.* Apr. 22, 1573.

²⁰ *Ibid.* Apr. 22, 1573.

²¹ *Ibid.* Apr. 22, 1573.

²² *Ibid.* Apr. 22, 1573.

²³ *Ibid.* Apr. 22, 1573.

²⁴ *Ibid.* Apr. 22, 1573.

²⁵ *Ibid.* Apr. 22, 1573.

²⁶ *Ibid.* Apr. 22, 1573.

²⁷ *Ibid.* Apr. 22, 1573.

²⁸ *Ibid.* Apr. 22, 1573.

To these notices, the following additional information may be annexed.

V. MR ROBERT ROSS of Craigie, above mentioned, seems, from entries in the Kirk Session Records of Perth, to have been reduced to a state of the utmost poverty and destitution. Mr James Scott, in his Extracts from these Records, has the following melancholy entry:—‘ On the 21st of November, 1620, *Andrew Ross*, in name of *Mr Robert Ross*, sometime of *Craigie*, his brother, produced before the Session the said *Mr Robert’s* Supplication, showing his present misery, and divers diseases wherewith he is vexed, craving support. Three pounds were taken out of the Thesaurie and delivered to the said *Andrew*, to give this brother.’¹

The Editor has not been fortunate enough to obtain any material information regarding the personal history of *Mr Thomas Ross*. From his own DEPOSITIONS,² however, it is abundantly clear, that he must have endured great privations while in England. In that document he actually asserts, in the most solemn manner, that he was driven, by his desperate circumstances, to adopt the unhappy step which ultimately proved the cause of his destruction, in the vain hope, that the wit and talent he had thus exhibited in so bad a cause, would not only plead his apology with the King and Court, but become the means of his future advancement. *Mr Scott* merely remarks, as in reference to this matter, that ‘ it appears, from a Supplication to the [Kirk] Session, a considerable time before, that *Mr Thomas Ross* had been a long time in the Prison of Edinburgh.’

In conclusion of the disagreeable subject, it is only necessary to add one other entry, from the Kirk Session Records of Perth. It is pleasant to remark, that that charitable body had all along acted in the kindest manner towards this truly unfortunate family; and farther, that they appear to have been actuated by the same pious feelings, in numerous other cases of a similarly distressing description.—‘ Jan. 9, 1621. Mr John Guthrie, Minister, reported, that he had given *thirty shillings*, which he had received from the Thesaurie, to *Andrew Ross*, to bear his expenses, when he passed to the visitation of [*his brother*] unquhil *Mr Thomas Ross*, before his execution.’³

The Editor has failed in tracing the period when Ross was admitted a Master of Arts, and at what University, although he was politely assisted in his enquiries by the REVEREND DR LEE, who gave him access to the Rolls of the Universities of St Andrews and Glasgow. He fears he has already encroached too much on the limits of this work, and now leaves the reader to draw his conclusions as to the usage and cruel fate of the unfortunate Mr Thomas Ross.]

I. LETTER, the King to the Privy Council of Scotland, with instructions as to Mr Thomas Ross.⁴ [*Sine data.*]

RIGHTIE trustie and righte welbeloued cofen and counfellour, and trustie and welbeloued counfellour, WEE greete yow well. WEE fende yow here encloued, a LIBELLE, (written by a villanous caytiffe, or rather monster, of our owne contrie,) whiche, in time of Disputations at OXFORDE, was affixed vpon a gate of one of the Colleges, as THESES to haue bene disputed: And a scholler, hauing taken doune and red the first six lines, (not daring to be confcious to him selfe of reading furdur of such purpos,) presentlie caried to the VICE CHANCELLOUR; who, suspecting who mighte be the penner, fente for him; and hauing gotten his CONFESSION, that not onlie he was the author, but likewise, that he wolde maintayne all to be trew which he had fette doune therein, the Vice Chancellour discreetelie and dewtifullie committed him cloffe prifoner to the Castle of Oxforde, and fente the Libelle to vs, that WEE mighte declare oure pleasour, bothe concerning it and the author. Whiche, his discreete cariage, hath, in our iugement, deferued to be, by a Letter of thankes frome our wholle COUNSELLE,

¹ *Mr James Scott*, Minister at Perth’s Extracts from the *Kirk Session Records of Perth*, II., 8, &c. ² See this Appendix, p. 588, &c.

³ *Scott’s* Extracts from *Kirk Session Records of Perth*, II., 8.

⁴ From the Original draught, preserved amongst the *Denmylne Papers*, Adv. Library. It is carefully corrected, and interlined in many places.

there acknowledged. WEE likewise sende yow the person of the man, to be censured by yow, willing yow firste to examine him, and thereafter aduise of the forme of punishment whiche yee shall thinke fitte to be inflicted vpon him. For, although by the Lawes of this our kingdome, it be not permitted for to vse extraordinarie punishments, yat hath it euer bene lawfull for the KINGES there, to denese and inflict punishments, according to the qualitie and nature of the offence, which in this particulare can be no lesse then Treason[!] For if no man make question but that the writing of an inuectiue¹ againste THE KING and his progenie is Treason, in the highest degree, and in our opinion it is a grevous faulte, (and WEE could more easilie forgiue the writeing againste our selfe,) then² againste the wholle Nation frome whence WEE ar sprunge. And if it wer a mater capitall in Germanie for STARCOIUS³ (being a German, a mere stranger to Scotland, and one who, perchance, had bene hardlie vsed by some particulare person there) to haue written against that wholle Kingdome, how much more muste it be capitall to this fellow, who, being Scottes borne, hath so villanouslie, filthilie, yea, and falllie, defamed his owne contrie, by writing in such sorte againste his contriemen, the specialler of our seruantes, [and perswaded a course to be taken against them, which possiblie could not be performed, without manifest danger and manifest violence against our selfe,⁴] and so much the more is his offence greenous, as that, by the space of two monethes before, he continuallie vaunted that he wolde do such a feate. It is therefor our pleafour, that yee aduise vpon his punishment, and hauing resolved, that yee aduertise vs with all expedition. So fare yee well.

II. LETTER, *the Privy Council of Scotland to the King.* Jul. 30, 1616.

MOST SACRED SOUERANE,

WE ressaue youre MAIESTEIS Letter, with the infamous LIBELL writtin be that wretched and vnhappy fellow ROSSE, and we imparted the same to youre MAIESTEIS COUNSELL; who, with all dew reuerence and most humble thankis, doe acknowledge youre MAIESTEIS singulair cair and prudent directioun, alswell in this, as in all otheris thingis importing the credite and reputatioun of this youre MAIESTEIS Kingdome; and thay haif writtin thair awne thankis to *The Vice Chancellaire of Oxfoorde*, for his wyfe and kynd resolutioun and proceedingis, in that mater.

We haif aduised with THE LIBELL, and with the Lawis and Constitutionis of this Kingdome, maid agais the writtaris and settaris oute of suche infamous Libellis; and we find the same to be capitall, and pvnishable in the heighest degree. This fellow is not as yitt come heir; and becaus of the approteicheing vacance,⁵ and dissolueing of THE COUNSELL, we haif gevin directioun to THE MAGISTRATIS OF EDINBURGH, howsoone he shall aryve, to committ him cloise prisounair in thair *Irne-Houje*,⁶ and to lay him in irnis; and vpoun thair aduerteisment, we shall conueene and examine him; and accordinglie, we shall gif directioun for his tryall and convictioun, and shall superceid the pronouncing of Doome, till we vnderstand youre MAIESTEIS forder pleafour, anent the forme of his pvnishment. Oure opinioun is that he shalbe HANGED at *the Mercatt-Croce of Edinburghe*, and his heade affixt on one of *the Portis*. But in this we submitt oure selfis to your MAIESTEIS directioun; quhairunto we shall conforme our selfis. And so, praying God to blisse your MAIESTIE with a lang and happy reigne, we rest

Your Maiesteis most humble and obedyent subiectis and seruitoris,

AL. CANCELL^s. BINNING. S. W. OLIPHANT.

HALYRUDHOUS, pennit July, 1616.

TO THE KING his most sacred and excellent MAIESTIE, &c.

¹ The original words had been 'such an execrable inuectiue.' ² On the margin, 'that one should write against his own countrie.' ³ See the Introduction to *Ross's Triad*, III., p. 445, &c. ⁴ The words within brackets are added on the margin. ⁵ 'Vacance;' vacation. ⁶ Their strong iron room, or 'cage,' as it was afterwards called, in which desperate criminals were confined previous to their execution.

III. *Followis* THE THESE, *with* THE APPENDICES *adionet* thairto, *translated*.¹

THAT all SCOTTISMEN aucht to be throwin furthe and expellit out of THE COURT OF ENGLAND, (excepting his gracios MA^{TIE}, his sone, and few vtheris,) and that þe INGLISCHMEN ar nichttelie blindit, deceavit, and fyllet, albeit thay be vtherwayis ane Natioun full of eyis, and quick-sichtit, that sufferis so vnprofittable and pernicious a multitude and puddle of raskallis to rage and bear dominion within thair entrallis and bowellis. Off quhilkis blasphemis (3e haif writtin) that 3e wald rander and follow out the maist iust reasones, by Godis grace, at ane vther occasioun, moir lairglie and accuratlie, bothe by profe and verfe. Bot now 3ow put furth 3our finger to schaw only the fontanes, and theaife in few number, be reffone 3e inlaikit lafer² and helpis to performe the samyn.

I. SANCT JEROME, AUGUSTIN, and STRABO wryttis, that SCOTTISMEN of auld war men-eitteris, or eatteris of menis flesche; and trewlie, (as 3e beleve,) for as 3it the flesche whilk the ancient Scottis swallowed stikis in the jawis and teith of the Courtiours, quhairby thay ar provoikit to fuche ane insatiable avarice and intollerable pryde.

II. JOSEPHUS wryttis, in his booke against Appion, that, in the tyme of Amenophis, King of Ægypt, thair raget and rauaget vp and doun tua hundreth thowseand lipperis in Ægypt, quha, by vnlauchfull meanis, and by mervellous craftines and subtiltie, emptied and pilleid³ all þe substance and riches of Ægypt; whilk wald haif bene haillie vndone, gif this vnhallohit menzie⁴ had nocht, by the wisdome of the King and Nobillis, bene cassin out and expellit: Sua, peace and peace,⁵ THE KING and COUNSALL OF ENGLAND fall be vndone, and go doun, iff this companie or band that robbis Kingdomes and landis be nocht sent bak to thair wounted feattis and flallis.

III. THE seaven leane ky⁶ of Pharao conswmet and d'stroyit the fevin fatt and weil fed ky, and 3it war nocht fatisfeit; and the fevin deaff and toome⁷ earis of corne, blasted with the East wind, swallowed vp the fevin big and fatt eares, and war nocht filled: Swa, these Courtiours, by thair begynning, and offspring, and first estait, being most miserable, thay distroy, overturnes, and consumes INGLAND, ane maist plentiefull cuntrie; and ar nocht 3it filled with so grit and evill conquessit⁸ ritches, acqyret by the schipwrak of þe haill Kingdome of England.

IV. THAY quha, in pair 3outh-heid,⁹ war trvbillit with famine and hunger, can nocht, quhan thay ar cum to thair full growne aige, by no plentie, be fatiat:¹⁰ Sua, it befallis vnto these, quha of maist sklender begynning, by mad mirriement and sport of Fortoun, ar cayreid vp to the heichest top: 3ea, gif pair war gevin vnto his maist bountiefull and liberall MAIESTIE ane thowseand philosophik stones, quhairby the haill Oceanus might be convertit in gold: 3itt, these wald nocht be filled, gif the Cantabrik or Biskay Sea of Spayne, war gevin vnto thame to drink; thay wald nocht suffer ane thriftie bird to drink ane drope thairrof.

V. THAY spend more in pair gairtanes, and ribbens¹¹ in the latchettis of thair schooes, than pair fateris bestowis in þe intertenement of pair haill famelie. O quhat tymes ar these! O quhat maneris be these! O the infamy of the world and reproche of the earthe! Now pair is mony Smerde Magiens, but thay vaunt thame selfis fa to be.

VI. THESE Scottis Courtiours (verrie few exceptit) haif the disloyaltie or vnfaithfulnes of the Carthaginians; the menfwrne aithes of the Phrygianis or Trojanes; the luxurie of the Persians; the avarice of Mydas, King of Phygia; the crewaltie of the Efedonis, ane people of Sythia; (quhilke people singis at pair parentis funerallis, and drinkis in 3air skullis, and eattis pair flesche mingled with vther beiftis;) the prophanitie of Epicurus; the deceat of Synon; mair wyld than a carian, a bettill, or elok vnder the wingis of ane Eagle; thay vse the spuilzeis¹² of Spartacus, (this Spartacus was a Thra-

¹ From the identical copy of the Dittay, which had been transmitted for THE KING's inspection, preserved among Sir James Balfour's MS. Collections, Adv. Library, Edinburgh.

² Wanted leisure.

³ Pillaged; plundered.

⁴ Train; company; gang.

⁵ So, or in like maner, piece-meal.

⁶ Seven leane kine.

⁷ Empty.

⁸ Ill-

⁹ Youth; minority; less-age.

¹⁰ Satiated.

¹¹ Garters and ribands.

¹² Spoils.

cian fenfer¹ quha with Chyfus and Oenomaus brak out of the Fence-Scole of Lentulus, and drestit ane army of fervandis, and overcame Clodius Glaber his army, and spuilzeit all Campania, and overthrew Lentulus army and Cassius troupes, bot was defeat by Craffus,) and the fearcenes of Virratus (the Portugall Lusitanius, quha frome pastor become ane hunter, and paireftir the chiftane of ane army, trablet the Romaines, and defeat thame in Spayne, and at lenth was slayne be treassone, procureit be Cæpio), and the leafings of the Candians or Cretes.

VII. Vnto his schyneing and royall MATIE, be vnturbed health and increse of glorie ! Bot God, frome the heavnes, perfew these Courtiours with blak fyre and brimstone ! I shall, so long as I leave, for thair distruction, schaw my self Coriolanus, and nocht Themistocles ; that is to say, ane oppin ennemie, and nocht ane secreit freind.

VIII. O INGLISCHE ! Inglische ! The most expert and wyfest Natioun in weir,² the terrour of the Spanzaird, triumpharis over France and Guyene by so long a tyme, in quhat benumbnes or droufines ar ze fallin ? Ze, quha in weir and battell ar intometable,³ now ze fall go doune quikie by distait, at vayne appeirances of imaginarie matteris, and by the toyis of fals accusaris and delatouris, in quhome thair is nocht so muche fauorines or witt as in the quhyte of ane egge ! Sitt all the wealth and commodities of your most flurischeing kingdome, is cayreit away in boittis and crearis,⁴ thiftionlie, to Scotland ; and incontinent, being helpit with your awin commoditeis, thay will vtterlie trampill vnder fute your Natioun and countrie, and will cut your throttis with your awin fuorde, befor ze be awar ! Quhat a patient Socrates will indure thease iniureis ! Quha may nocht snuff or smell gritter schortlie to follow ?

IX. Ze haue gottin out of Scotland ane most worthie PRINCE ; nocht ane thowfeand Kingis, counterfute Stage-playeris, quhytted tombes !⁵ Thair is hingand aboue your heidis, or lying vpone your schoulderis, ane moir hard servitude and sheearpar captinitie than over Nationes quhilkis ar subdewid and overcum by weir ! For, eftir the Romanes had overthrawn, in weir, the Syrianis and the Ægyptianes, thay gave thame to be governet be thair awin cuntriemen ! Thay exactit only tribute dew frome the vanquished ! Sall, thairfoir, those barbarous people posses and injoy the first places, in Courte, in Counsaile, in Kirk, in Nobilitie, in Landis, offices, functiones, and giftis of Ingland ? Thair surlie, the libertie and glorie of Ingland is evanished ! Now, Ingland is hailyly⁶ delyuerit over in the handis of Scottis Courtiouris, and the Judges haif enterit pair nekis vnder the soke of theiffis ! O, the Warld is turned vp fyde doun ! We ar now overturned vnto the auld mafs and chaos of confusion ! Lett sum revengde spring out of my bones, that may cheslize with fyre and fuord the Scottis Court and her possessours. Geve thankis, ze Scottis Courtiours, vnto my povertie, and nocht vnto the barrannes and penurie of my ingyne, gif I airmé nocht all Ingland to cut your throttis. Bot the Lord preserve ever more his awin annoynted, both weilbelouit and electit !

X. REMOVE this stinking pompe, pudle, and trifles of the Scottis Court, and pride of this hautie, fekles,⁷ and impotent commontie. Thane, fall thair be few in your boundis that fall be beggeris, nidie,⁸ ragget—than, the treyis, gibbettis, and gallouffis of all the cuntrie fall nocht be laiden with the wecht of the hangit vp carcadges !⁹ The Scottismen, as loch-leitches, and wormes in coirnes, drinkis out the sap of your cuntrie, and soukis out your merche,¹⁰ by inlaik quhairof so many ar led and drawin to thift and robbie ! Those Courtiours draw out gritter welthe furth of your howellis, by your knowlege,¹¹ than France, Germany, and Spayne, is able to affoord ; quhilkis guidis, whan thay ar thus pullet¹² away, quhat fall þe maisterfull and niedie cowmontie¹³ of Ingland do or vudertak, bot to cast thame

¹ Fencer ; gladiator.

² War ; the art military.

³ Indomitable.

⁴ Boats and *cr. ars*. Crears were

a sort of vessel much in use in the Western Islands, to which they appear to have been peculiar.

⁵ Whited

⁶ Wholly ; entirely.

⁷ Weakly ; feeble, &c.

⁸ Needy.

⁹ Carcasses.

¹⁰ Sucks

out your marrow.

¹¹ Without your knowledge ; secretly ; by stealth.

¹² Perhaps, for ' *pillet* ;' pillaged ;

plundered.

¹³ Destitute and needy ' communalty,' or common people.

felfis heidlong in ane golff,¹ quhilk mycht leave² sufficientlie, without manis hearme, gif thofe howlattis and ftymeis³ war fchote⁴ away.

O, worthieft Ingliſchmen ! Wey the force and reaſones of this my Counfall, quhair of I haif ſkairce recited the tent pairt ; and 3e ſall perſave that I am come to 3our cuntrey as ane helthfull ſtarr, quhilk thir Courtiours haif drowned with the ſea wallis, as the Lycaonian Starr, or Vrfæ Maior, to quhome it war ane villanie to have ſo drowned ſuche ane ſtarr.

Bot we ſall nocht all die to day vnrevendget !

IV. *Followis the tennour of THE DEPOSITIONES of Mr Thomas Roifs.*

AT EDINBURGH, the ellevint day of Auguſt, 1618. In prefens of Sir Williame Oliphant of Newtoun, his Maieſteis Aduocat.

MR THOMAS ROISS, humblet on his kneis, and deiplic ſuorne vpone his ſolempne oathe, ſayis, that he will declair the treuthe in all and everie thing that ſall be demandit of him. Demandit, yf THE THESIS, and APPENDICES pair of, producet and ſchawin vnto him, and writtin on thre fydis of paper, be his awin hand-writt ? Depones and grantis, that thay ar his awin hand-writt—and that na vther perſone wrait ane word or Lettir pair of.

Demandit, quhat moved him to wryte them ? Depones, that he, being ane gentilman borne, depryved of all benifeit that he micht expect of his fateris eſtair, and being reducet to the extreme point of miſerie and povertie, and haveing reſlaueit mony inſupportable iniureis of his cuntreie men, at Courte ; he, being eſchamed to beg, and diſdaneing to ſteill, and haveing no meanis quhairly to intertene⁵ him ſelff, finding no comforte nor releif of his contriemen at Courte, he pairfoir, being in diſpair and mad, out of his diſtemperat humour and frenyſie, and fair aganis his heart, without ony ſetled reſolutionn, and without ony purpois to do evill, bot to ſehaw the greif of his heart, and to move pitie and compaſſioun towardis him, wrait thir THESES ; thinking, that the wryting pair of, in this his mad humour and diſpoſitioun, wald raper procure pitie nor⁶ wraithe, at HIS MATIES handis ; and that God, peradventure, wald moue HIS MATIES heart, who is a prudent and wyſe Prince, to think that the deponer was drevin, vpone plane miſerie and neceſſitie, to wryte thame ; and pat pairfoir HIS MATIE wald pitie his diſtres and miſerie, and help him : And he apprehendit that ſome weill-myndit Courtiours wald interceid for him, and ſchow HIS MATIE that he quho had done ſo weill vpone a evill ſubiect, wald do far better vpone a goode ſubiect, gif he war employed ; bot, yf it ſould pleis God to move HIS MATIE to think vtherwayis of this matter, and to tak it in evill pairt, it behooved the deponer to abyde Godis will and THE KINGIS MATIES.

Demandit, quhat he did with thir THESES, eftir the wryting thair of ? Deponis, that he affixt thame on a dur of the Kirk, callit ST MARIES KIRK, at OXFURDE, vpone Twiſday, being a preiching day, in the moneth of July laſt, immediatlie as the people war diſſolueing frome the Sermon, and as DOCTOR GODWENE, VICE-CHANCELOUR of THE VNIERSITIE of OXFURD, was cuming out of the Kirk. And depones, that immediatlie eftir pai war affixt, ane man, quhome the deponer knowis nocht, tooke thame down, and cayreid thame to þe Vice-Chancellor. And grantis, that THE THESES now producet and ſchowne vnto him ar þe ſame verrie Theſes, and that ſame Paper quhilk he wrait and affixt, as ſaid is.

Demandit, yf at ony tyme afoir þe wryting of THE THESES he was in conference with ony perſones pairant ? Depones, that ane moneth afoir the affixeing of THE THESES, he was in conference with þe Vice-Chancellor ; and regrated vnto him his hard eſtair and conditioun, and the vnthankfulnes of his countrie men, the Courtiours, quho wer his gritt vnfreindis.⁷ And he ſchew the Vice-Chancellor that he had a purpois to go to France, and intreited him that he mycht haif a *viaticum*⁸ to tranſ-

¹ Gulf.

² Who might live, &c.

³ Owls and bats.

⁴ Thrust ; driven.

⁵ Support ; maintain.

⁶ Than.

⁷ Enemies.

⁸ In this ſenſe, *viaticum* ſeems to have been a term employed to denote a charitable contribution raiſed by authority, within the Universities, for enabling poor ſtudents to undertake journeys to foreign parts, &c.

point him. Quhairvnto the Vice-Chancellour 3eildit. Bot the deponer being efchamed to go through the Colledges to collect the fame, he reffaut only foure or fyve pund Sterling, and fendit it as he gat it; quhairas, gif he had reffaut all that wald haif bene gevin, in caice he had tane panes to go throuche the Colledges to haif collectit it; or yf he had gottin ony *viaticum* frome HIS MA^{TIE}, he wald noch haif writtin thir THESES, bot wold haif gone to France.

Grantis also, that he regraited the vnkynd deilling of the Scottis Courtiouris towardis him, to Sir Harie Schaveill, Principall of Eittin Colledge, befyde Wyndfoir; bot denyis, vpone his gritt aithe, that he impaired his purpois to wryte THE THESES, outh¹ to the Vice-Chancellour or to him.

Demandit, be whose advyse he wrait thir THESES? Or, yf he had conference with ony perfone thairanent? Depones, vpone his grit oathe, that he had no advyse, counfall, nor informatioun gevin to him in that matter; bot being at Greenwich, a littill eftir he went to Oxfurd, he addrest him selff to one of THE KINGIS Chaplaines, quho is a heiche² tall man, and was walking in Grenewitche Hall for pe tyme. His name he knowis noch. And he intreited the Chaplane to tell THE KINGIS MA^{TIE}, that he was borne away; and that he had long waited on, without ony help or suppoit; and that he was now drevin to grit povertie; and that he wald pray God for the weifair of HIS MA^{TIE} and his childrene—bot, for his cuntriemen, the Courtiouris, quha had bene so vnthankful vnto him, he fould rather be lyk Martius Coriolanus vnto tham, nor³ Themistocles.

Grantis also, that afoir his passing to Oxfurd, he forgaderit with on Johnne Line, Scottifman, a taillour, duelland in Titler streit; and that he tauld him, that wer not for pe respect and reuerance that he cayreid to HIS MA^{TIE}, he was halflingis myndit (yf he gat noch some suppoit to carye him to France) to sett vp some THESES, either in Oxfurde or in France, against the Scottis Courtiours, and that it was goode for THE KING to fend some of thame away. And the deponer desyret Johnne Line to acquent THE KINGIS MA^{TIE} heirwith, be Petitoun; and he craved Johnne Lynes advyce, how he micht efchew the wryting of these THESES; bot Johnne Lyn had no advyce in the matter. And sayis, vpone his grit oathe, that he nevir reveillit forder of this matter to ony perfone, bot so far as he hes confest, concerning the Chaplane and Johnne Lyn. And denyis, vpone his oathe, that evir he gave out or disperfit ony coppeis of thir THESES.

Demandit, yf at ony tyme eftir he had meditat vpone the wryting of THE THESES, and afoir his affixing of the fame, he communicat the matter to ony perfones, or schew pe THESES vnto thame? Depones, that he only reveillit the matter to his oist⁴ in Oxfurd, callit Johnne Ewing, taillour, and to his wyffe, in this maner, to wit, that he was going to wryte something quhairof the haill scollaris of Oxfurd wald schortlie get knowlege, and wald heir of it; thairfoir, let me be quyet a quhyle, and lett no man truble me. And this was xxiiij houres afoir pe affixing of the THESES.

Demandit, how it was knowne that he had writtin and affixt the THESES? Depones, that the Vice-Chancellour knew his hand-writt, and fend for the deponer within a quarter of ane hour eftir the affixing of the fame, and askit of the deponer, 'Gif he had writtin thame?' Quhilk the deponer grantit. Quhairvpone the Vice-Chancellour fend him prifoner to the Castell of Oxfurde; quhair he was straitlie keipit ten dayis; till thre Scottifmenne of the Gaird war fend to bringe him to Courte. Denyis that, during his abode in Oxfurde Castell, he had speiche with ony perfones anent this matter, bot⁵ with his keipparis and vtheris prifoneris; quho askit of him, the cause quhairfoir he was wairdit? To quhome he anfuerit, becaus he had writtin some littill thing aganis his cuntrie-men, the Courtiours, advyfeing THE KING to fend some of thame hame.

Depones, that quhen he come to Courte, he was putt in a Inne, befyde Charing Croce, quhair he stayd thre nychtis and two dayis; and that he was examinat be the Duke of Lennox,⁶ the Marqueis

¹ Either. ² High. ³ Than. ⁴ Host; landlord. ⁵ Unless; except. ⁶ Ludovick, second Duke of Lennox, who had held some of the highest honours in Scotland. He was Great Chamberlain, Lord High Admiral, and Lord High Commissioner to the Parliament of Scotland, 1607. The Duke of Lennox was successively created Earl of Richmond, (Oct. 6, 1613,) Earl of Newcastle and Duke of Richmond, (May 17, 1623,) Master of the Household, first Gentleman of the King's Bedchamber, and one of the Knights Companions of the Order of the Garter. He died Feb. 16, 1624, *at* 50, without being survived by any of the issue of either of his three marriages.

of Hammiltoun,¹ the Vicount Fentoun,² the Lord Hay,³ and Sir Williame Alexander.⁴ And pat pair-
 efter he was convoyed to (a) schip of Prestoun, lyand at Southwark, be Mr Johnne Broun and Patrik
 Logane, Scottifmenne, and be ane Inglisfchman of the Gaird.

M. T. Ros,⁵ with my hand.

T. W. OLIPHANT.

No. V.

DOCUMENTS RELATIVE TO THE 'EGYPTIANIS,' OR GIPSIES.

[IN many parts of the preceding Volumes, TRIALS have been inserted, from time to time, regarding the remarkable Asiatic people, commonly known in early times, in Scotland, by the name of EGYPTIANS. It seemed to the Editor to be desirable to afford to the enquiring reader some traces of their wanderings in Scotland, during the fifteenth and sixteenth centuries; and for that purpose, he has examined as many of the earlier Records as his opportunities have, at present, permitted.

It is sufficient, for the purposes of this Collection, to remind the reader, that, from whatever country that singular race took their origin, (which, though there be much room for difference of opinion on the general question, was assuredly Oriental,) and whatever the causes may have been which prompted their emigration, or occasioned their expulsion, from their native soil, this wandering people first made their appearance in Europe early in the fifteenth century. They succeeded, in spite of numerous decrees of expulsion and persecution, in making good their settlement in various kingdoms, and especially in the countries of Poland, Germany, Hungary, France, Spain, Italy, England, and Scotland. It is very remarkable, that, although they have now been resident in Christendom for nearly *four hundred years*, they have preserved themselves as a separate and peculiar race, in *all* the countries where they have sojourned; and have all along been characterised by their distinctive manners, customs, language, and superstitions, which have been kept almost pure and unimpaired, from the date of their first emigration. Indeed, few instances have occurred, in any country, where any considerable portion of them have steadily settled in towns, or followed any

¹ James, *second* Marquis of Hamilton, a great favourite of King James VI. He was created an English Peer, by the titles of Baron of Emmerdale, in Cumberland, and Earl of Cambridge, June 16, 1619; was a Gentleman of the Bedchamber, Steward of the Household, and Lord High Commissioner to the Scottish Parliament, 1621; and Knight of the Garter, Jul. 7, 1623. Died Mar. 2, 1624-5, *ætat* 36.

² Alexander, Viscount of Fentoun, eldest son of Sir Thomas Erskine of Gogar, created Earl of Kellie, Mar. 12, 1619; and father of Thomas, *second* Earl of Kellie. Obiit, Feb. 1633.

³ John, *eighth* Lord Hay of Yester, created *first* Earl of Tweeddale, Dec. 1, 1646. ⁴ Of Menstrie, the celebrated Peet, who obtained a Grant of Nova Scotia, in America, by Charter, Sep. 10, 1620. He was created Viscount of Stirling, &c., Sep. 4, 1630; and Earl of Stirling, Viscount of Canada, and Lord Alexander of Tullibody, June 14, 1623: and died at London, Feb. 1640, but was buried at Stirling, Apr. 12, 1641.

⁵ 'MR THOMAS ROSS, present Minister at *Cargill*, obtained a GIFT, under the Privy Seal, of THE VICARAGE OF CARGILL, with the fruits, rents, teinds, &c., and 'with the Manse and gleib thairof,' lying within the diocese of Dunkeld, and sheriffdom of Perth; 'during all the dayis of his lyfytyme.'—*Register of Presentations to Benefices*, Vol. III, Jul. 26, 1606.

sedentary or useful handicraft. On the contrary, they have literally wandered from place to place, seldom remaining above a few days in one spot, "living in tents," and subsisting by plunder or knavery.

In those kingdoms, where they have effected a steady footing, they have all along been distinguished by the name of **BOHEMIANS, GITANOS, ZINGARI or CINGARI, ZIGEUNERS, TZINGANYS, GIPSIES, and EGYPTIANS.**

As so much has been written regarding the origin and history of the Gipsies, by *Hoyland, Grellmann, &c.*¹ it is only necessary to premise these facts, in the briefest manner. The reader will find several very curious and interesting essays on the history of the Scottish Gipsies, written in a popular and entertaining form, in the two first volumes of *Blackwood's Magazine*, and also in the *Encyclopædias*. The Editor has just been informed, that a work is at present preparing for publication, which professes to embrace all that is known regarding the history of these wanderers, especially in the various districts of Scotland, which renders it still less necessary to enlarge in this place.

It may be remarked, that in the fifteenth century, **THE EGYPTIANS** uniformly, in the numerous countries to which they migrated, gave themselves out to be *Christian Pilgrims*—and their leaders assumed the titles of **KINGS, DUKES, COUNTS, or LORDS of LITTLE EGYPT**; from which country they always pretended they had been expelled by the *Saracens*, on account of their **RELIGION**. Certain it is, that at present they appear to profess *no religious belief whatever*, and they lead the most immoral lives, and herd together like hordes of savages, in a promiscuous state, wholly unknown to any other race now extant in Europe, living "without God and without hope in the world." With their characteristic cunning, it is likely that this assumption of the appearance of *Pilgrims* was only in accordance with the superstitious and prevailing customs of the times. Under this character they had the address to impose upon almost all the Sovereigns of Europe, and obtained passports and privileges from them; and even **THE POPE** himself was not protected from their artifices, by his boasted *infallibility*.

In examining the Books of *the Lord High Treasurer* of Scotland, the following entries occur. They are here laid before the reader, without further comment.

'Jul. 17, 1492. Item, to Peter Ker to passe to **THE KING**² to the Hwnthall,³ to get the Letteris subserivit to **THE KING of ROWMAIS**, iiij f.

'Jul. 19. Item, to **THE KING of ROWMAIS** messinger, at the Kingis command, xx li.

'Maij 2, 1501. Item, to *Peter the Moryene*,⁴ quhen he passit his way to France, iiij li. x f.

¹ *Hoyland's Survey of the Gipsies*—Grellman. *Hume on Crimes*. *Mackenzie's Obs. on the Statutes, &c.* See also *Acta Parl.*; *Burnet's Hist. of Reformation, &c.* ² **JAMES IV.** ³ Of

Glenfynlas, or Glenartnay, where the King was in use to resort at that season of the year. ⁴ It appears by other entries in the Records, that this person, and certain '*More layfès*,' were minstrels and servants to the Queen.

‘ Maij 10, 1502. Item, to THE ERLE OF GRECE, be the Kingis command, xiiij f.

‘ Jun. 28. Item, to ANE KNYCHT OF GRECE, be the Kingis commande, vij lib.

‘ Item, for ane ring of gold, fet with ane dyamant, and tua rubyis, in maner of *flour de lice*, iiij lib.

‘ Feb. 24, 1503. Item, in Drumfreife, to *Peter the Moriene*, ix f.

‘ Dec. 11, 1504. Item, quhen *the More las*¹ wes cristinit, giffin to put in the caudill, ix f.

‘ Apr. 22, 1505. Item, to THE EGYPTIANIS, be THE KINGIS command, vij lib.

‘ 1530. Item, to THE EGYPTIANIS that danfit before THE KING, in Halyrudhous, xl. f.’

These are the only early notices the Editor has hitherto met with, in that valuable Record. It is very probable, however, that some of them have no reference to Egyptians. A variety of other documents have been obtained from the Records of the Privy Seal, &c., which follow this brief and imperfect notice.]

I. LETTER from King James IV. to the King of Denmark, in favour of Anthony Gawin, Earl of Little Egypt, &c. Anno 1506.²

ILLUSTRUSSIME, &c. ANTHONIUS GAWINO, EX PARVA EGYPTO COMES, et cætera ejus comitatus, gens afflicta et miseranda, dum Christianam orbem peregrinationes studio Apostolicæ Sedis (ut refert) jussu, suorum more peregrinans fines nostri regni dudum advenerat, atque in fortis sue et miseriarum hujus populi, refugium, Nos pro humanitate imploraverat ut nostros limites sibi impune adire, res cunctas, et quam habet societatem libere circumagere liceret. Impetrat facile quæ postulat miserorum hominum dura fortuna. Ita aliquot menses bene et catholice, (sic accepimus,) hic versatus, ad te, REX et Avuncule, in DACIAM transitum parat. Sed Oceanum transmissurus nostras Literas exoravit, quibus celsitudinem tuam horum certiore redderemus, simul et calamitatem ejus gentis Regiæ tuæ munificentiae commendaremus. Ceterum errabundæ EGYPTI fata, moreque et genus eo tibi quam nobis credius notiora quo EGYPTUS tuo regno vicinior, et major hujusmodi hominum frequentia tuo diversatur imperio. Illustrissime, &c.

II. LETTER, under the Privy Seal, by King JAMES V. in favour of ‘Johne Faw, Lord and Erle of Little Egypt.’³ Feb. 15, 1540.

JAMES, be þe grace of God, King of Scottis: To oure Schereffis of Edinburghe, principall, and within the constabularie of Hadingtoun, Berwik, Roxburghe, Selkirk, Perth, Forfar, Fife, Clakman-nane, Kinrofe, Kincardin, Abirdene, Banf, Elgin and Fores, Narne, Innernese, Linlithq^w, Peblis, Striviling, Lanark, Renfrew, Dunbertane, Air, Drumfreis, Bute, and Wigtoun; Stewartis of Annanderdale, Kirkcudbrycht, Menteithe, and Stratherne; Baillies of Kile, Carrik, and Cunynghame; and paire deputis; Proveftis, aldermen, and baillies of oure burrowis and cieteis of Edinburgh, Hadingtoun, Lawder, Jedburgh, Selkirk, Peblis, Perth, Forfar, Cowper, Sanctandrois, Kincardin, Abirdene, Banf,

¹ Dec. 2, 1512, she is styled the ‘*QUENIS blak madin*,’ and on Feb. 1612-13, ‘*Blak Elene*.’ And on Jul. 19, 1513, ‘*Blak Margaret*’ gets a payment of xlvij s. They do not appear to have been Egyptians, but Negroes. The notices, however, are so curious that they are given along with the rest. ² *MS. Reg.* 13. B. II. Taken from *Pinkerton’s Hist. of Scotland*, quarto, Lond. 1797, vol. ii. p. 444. ³ *Reg. Secr. Sig.* xiv., 59. A very unfaithful transcript of this document had formerly been published in the Appendix to *Maclaurin’s Criminal Trials*.

Elgin and Fores, Narne, Innernefe, Linlithq^w, Striuling, Lanark, Glasg^w, Ruthirglenne, Renfrew, Dunbertane, Air, Drumfreis, Wigtoun, Irwyne, Kirkcudbright, Quhitterne; and to all vperis Schereffis, Stewartis, proveffis, auldermenne, and bailleis within oure realme, greting. FORSAMEKILL as it is huimlie menit and schewin to ws be oure louit, JOHNNE FAW, LORD AND ERLE OF LITILL EGIPT; That quhair he obtenit oure Lettres vnder oure grete feile, direct to 3ow, all and findry oure saidis Schereffis, stewartis, baillies, proueffis, aldermen, and baillies of burrois, and to all and findry vpiris havand autorité within oure realme, to assist to him in executioun of justice vpoun his cumpany and folkis, conforme to pe lawis of EGIPT, and in puniffing of all paim pat rebellis aganis him: NEUIR-PELES, as we ar informyt, SEBASTIANE LALOW, Egiptiane, ane of pe said Johnnis cumpany, with his complices and pairt-takaris vndir-writtin, pat is to say, ANTEANE DONEA, SATONA FANGO, NONA FINCO, PHILLIP HATFEYGGOW, TOWLA BAIL3OW, GRASTA NEYN, GELEYR BAIL3OW, BERNARD BEIGE, DEMER MATSKALLA, NOTFAW LAWLOWR, MARTYNE FEMINE, rebellis and conspiris aganis pe said JOHNNE FAW, and hes removit pame alluterly out of his cumpany, and takin fra him diuerse fowmes of money, jowellis, claitis, and vpris gudis, to pe quantité of ane grete fowme of money, and on na wyfe will pafs hame with him, howbeit he has biddin and remanit of lang tyme vpoun pame, and is bunding and oblist to bring hame with him all pame of his company pat ar on live, and ane testimiale of pame pat ar deid: And als, pe said JOHNNE hes the said SEBASTIANIS Obligatioun, maid in Dunfermling, befor our Maister houffald, pat he and his cumpany suld remane with him, and on na wyfe depart fra him, as the famin beiris. In contrar pe tenour of pe quhilk, pe said SEBASTIANE, be finifter and wrang informatioun, fals relatioun, and circumventioun of ws, hes purchest our writingis, discharging him and pe remanent of pe personis aboue writtin, his complices and pairt-takaris of the said JOHNNIS cumpany, and with his gudis takin be pame fra him, causis certane our liegis assist to pame and pair opinionis, and to fortify and tak pairt aganis pe said JOHNNE, pair lord and maister; sua pat he on na wyfe can apprehend nor get pame to haue pame hame agane within paire awin cuntré, eftir pe tenour of his said Band, to his hevy dampnage and skaithe, and in grete perell of tynfall of his heretage, and expres aganis justice. OUR WILL IS HEIRFOR, and we charge 3ow straitlie, and commandis, pat, incontynent pir our Letteres sene, 3e and ilk ane of 3ow, within pe boundis of 3our Offices, command and charge all our liegis pat nane of paim tak vpoune hand to resset, assist, fortify, supplé, manteine, defend or tak pairt with pe said SEBASTIANE and his complices aboue writtin, for na buddis nor vper way, aganis the said JOHNE FAW, pair lord and maister; bot pat pai, and 3e, inlikwise tak and lay handis vpoune pame quhareuir pai may be apprehendit, and bring paim to him to be prnift for pair demeritis, conforme to his lawis: And help and fortify him to prnis and do justice vpoune pame for pair trespassis: And to pat effect, len to him 3oure presonis, stokis, fetteris, and all vper thingis necessar pairto, as 3e and ilk ane of 3ow, and all vperis oure liegis, will anfuere to ws pairupoune, and vnder all hieaft pane and charge pat eftir may follow; fwa pat pe said JOHNNE have na caus of complaynt heirupoune in tyme cuming, nor to resort agane to ws to pat effect, nochtwithstanding ony oure writings finifterly purchest, or to be purchest, be pe said SEBASTIANE, in pe contrar. AND ALS, charge all oure liegis, pat nane of paim molest, vex, inquiet, or trouble pe said Johne Faw and his cumpany, in doing of pair lesull besynes, or vperwayis, within our realme, and in pair passing, remanyng, or away-ganging furth of pe famyne, vnder pe pane aboue writtin: And siclike, pat 3e command and charge all skippars, maisteris, and marinaris of all schippis within oure realme, at all Portis and Havynnis quhair pe said JOHNNE and his cumpany falhappin to resort and cum, to refaue him and pame pairin, upoune pair expenses, for furing of pame furth of oure realme to pe partis beyond sey: As pai and ilk ane of pame siclike will anfuere to ws pairupoune, and undir pe pane forsaid. SUBSCRIT with oure hand, and under oure Priue Seile, AT FALKLAND, pe fiveteine day of Februar, and of oure reigne the xxviij 3eir.

Subscript. per Regem.

[JAMES R.¹]

¹ *Reg. Sc. Sig.* XIV. f. 59.—Vide also Apr. 25, 1553, and Apr. 8, 1554, Remission of Andro Faw, &c., for murder of Ninian Smaill.

III. PRECEPT *to the Earl and Lord of Little Egypt; granting power to him to hang and punish all Egyptians within the Kingdome of Scotland. Dated, May 26, 1540.*

PRECEPTEUM Litere JOHANNIS WANNE, filii et heredis quondam JOHANNIS FALL, MINORIS EGIPTI COMITIS ac DOMINI, et MAGISTRI EGIPTIORUM, infra REGNUM SCOTIE existent.—DAN. fibi potestatem predictos EGIPTIOS ad fibi obediend. et parend. plectere et punire, &c. APUD ST ANDROS, Maii 26, 1540.¹

IV. ACT *of the Lords of Council, relative to JOHN FAW,² &c. Jun. 6, 1541.*

THE quhilk day, anentis the complaintis gevin in be JHONE FAW, and his brether, and SEBASTIANE LOWLAW, EGIPTIANIS, to THE KING'S Grace, ilkane pleinzeand vpoun vther of diverse faltis and iniuris: And that it is aggreit amang thame to passe hame, and to haue the same decydit before THE DUKE OF EGYPT: The Lordis of Counsale, being avifit with the pointis of the saidis complaintis, and vnderstanding perfittlie the gret thiftis and scathis done be the saidis EGIPTIANIS vpoun our soverane lordis liegis, quhaireuer thai cum or resortis: ORDANIS Lettres to be direct to the Proveftis and Ballies of Edinburgh, Sanct Jhonstoun, Dundee, Monrofe, Aberdene, Sanct-androis, Elgin, Forrefe, and Inuernefe; and to the Schirefis of Edinburgh, Fif, Perth, Forfair, Kincardin, Aberdene, Elgyn, and Forefe, Banf, Crummarty, Inuernefe, and all vtheris Schirefis, stewartis, proveftis, and ballies, quhair it happinnis the saidis EGIPTIANIS to resort,—to command and charge thame, be oppin proclamatioun at the mercat croces of the heid Burgh of the Scherefdomes, to depairt furth of this realme, with their wis, barnis, and companeis, within xxx dayis efter thai be charget therto, vnder the pane of deid: Notwithstanding ony vtheris Lettres or privilegis grantit to thame be the Kingis grace: Becaus his Grace, with avise of the Lordis, hes dischargit the famin, for the causis foirfaidis; with certificatioun, and³ thai be fundin in this realme, the saidis xxx dayis being past, thai falbe tane and put to deid.

V. RESPITE, *granted to the Captain of the Egyptians and his three sons, for the Slaughter of Ninian Smaill.⁴*

ANE RESPITT maid to ANDRO FAW, CAPITANE OF THE EGIPTIANIS, GEORGE FAW, ROBERT FAW, and ANTHONY FAW, his sons; for airt and pairt of the Slauchter of umquhile NINIANE SMAILL, fervand to John Lard, Smith; committit and done in the moneth of Marche, the yeir of God Im.Vc. liij yeiris, upon suddantie: and for all actioun and cryme that may follow thairupoun: And for the space of xix yeiris to indure. AT LYNLYTHGOW, the xxij day of March, 1553.

VI. RESPITE *to John Faw, and other Egyptians, for the above-mentioned Slaughter. Apr. 8, 1554.⁵*

ANE RESPITT maid to JOHNN FAW, EGIPTIANE, ANDRO GEORGE, NICHOLAH GEORGE, SEBASTIANE COLYM, GEORGE COLYM, and uthers EGIPTIANIS, now being within this realme; for arte and parte of the Slauchter of umquhile Niniane Small; committit within the toun of Lintoun—19 years. AT LINLYTHGW, Apr. 8, 1554.

VII. ACT *of Privy Council, 'anent some Egyptianis.' Nov. 10, 1636.⁶*

APUD ED^B, 10 Novembris, 1636. FORSAMEIKLE AS SIR ARTHURE DOUGLAS of Quhittinghame haveing latelie tane and apprehendit some of the vagabound and counterfut theives and limmars, callit EGYPTIANIS, he presentit and delyverit thame to the Shereff-principall of the shirefdome of Edinburgh, within the constabularie of Hadington, quhair they have remained this month, or thairby; And

¹ This short entry is all that occurs in *Reg. Secr. Sig.*, under the above date.

² *Acta Dom. Con.*, XV., 155.

³ If; an.

⁴ *Reg. Secr. Sig.*, XXVII., 3.

⁵ *Reg. Secr. Sig.*, XXVII., 36.

⁶ *Reg. Secr. Concilia*.

quhairas, the keeping of thame longer within the faid Tolboith, is troublefome and burdenable to *the toun of Hadington*, and fosters the faids theives in ane opinion of impunitie, to the incourageing of the rest of that infamous byke¹ of lawles limmars to continow in thair theivish trade: THAIRFOIR, *the Lords of Secret Counsell* ORDANS the *Shireff of Hadinton* or his deputs to pronounce DOOME and SENTENCE OF DEATH aganis so manie counterfoot Theives as ar men, and aganis so manie of the weomen as wants children, ORDANING the men to be HANGIT, and the weomen to be DROWNED: and that fuche of the weomen as hes children to be SCOURGIT throw the burgh of Hadinton and *Brunt in the cheeke*: And Ordanis and commandis the Provest and Baillies of Hadinton to caus this doome be execute vpon the faidis perfons accordinglie.

No. VI.

OFFICES OF THE CLERKSHIP OF JUSTICIARY-GENERAL AND MASTER OF THE CEREMONIES, &c.

(*See Vol. III., p. 558.*)

[IN reference to the preceding entry in the Record, it may be interesting to insert the following singular Letter from Mr Alexander Colville, Justice-Depute, to Viscount Annan, which has been recovered from *Sir James Balfour's MS. Collections*, on account of its throwing some farther light on those important appointments; and besides, it is a curious document, and is highly characteristic of the parties concerned, and of the spirit of those times. It has also been thought proper to present to the reader a notice which occurs in the Books of Adjournal, containing the appointment of Sir George Elphinstoun of Blytheswood, knight, as Sir Archibald Napier's successor, in the first year of the reign of KING CHARLES I.]

I. LETTER,² *Mr Alexander Coluile, Justice-Depute, to Viscount Annan.*³
Dec. 20, 1622.

RIGHT HONORABLE,

YOUR LO. shall be advertiffed that he who is presentlie JUSTICE CLERC, (*the Lard of Ormeistoun*), is so afflicted with extreame aage, blindnes, and vther infirmities, that he is altogether disinabled ather to valk abrod, or discharge his place; and by all appearance, is not long to survive. And becaufe it concernes me so neir, that feruis HIS MA^{TIE} as Justice deput, to be veil or ewill yoked,⁴ in cace it pleis God that I liue, I haue aduentured thir few lynis, being confident of your lo. goodnes, that HIS MA^{TIE}, by your lo. informationn, micht be the better prepared aganis the importunitie of vnfit futurs⁵ for that place (of Justice clerk), quhilk aucht nocht to be giuen to thois that fitt⁶ it, bot to thois that

¹ Usually applied to denote a hive or nest of wasps, wild bees, or hornets.

² *Denmylne MSS.* Adv. Library.

³ Sir JOHN MURRAY, a *protégé* of the Earl of Morton, and a distinguished favourite at Court, was successively Gentleman of the Bedchamber, and Master of the Horse, &c. to James VI. He acquired great wealth and estates; and was created Viscount of Annan, and Lord Murray of Lochmaben; and afterwards Earl of Annandale, Mar. 13, 1624-5. ⁴ Well or ill yoked; having a good or bad partner, or coadjutor. ⁵ Suitors; applicants. ⁶ Petition for.

ar vorthie of it. And as the lywis of men ar mor pretious then their goods, so lett the vorthines of him be respected, to quhome the lywis of men ar to be trusted; for if he quho is to be inclosed with Affysors, (quha for the most ar rud and ignorant,) depending much vpon THE (Lord Justice) CLERC his informatioun; if he, I say, be not a found conscientious man, and frie of baife bribrie, he may prove a pernicious instrument, and be the cawse that iniquitie may be committed; as wee haue 3it in memorie, of on THOMAS SCOT *of Abotjhall*, quho was Justice Clerk to KING JAMES THE FYFT, of happie memorie, quho being strukin with a terror of conscience, at the hour of his death, for his ewill cariage in that place, dyed in disperatioun, crying, ‘I am damned! I am damned!’ 3it among all vperis, 3oung men, and men of great CLANNIS ar most dangerous for that place. Ceacing farther to fache 3our lo. earis, and referring all to 3our lo. prudence; vithing, that, by a happie election of such ane Officiar, God may gett glorie, HIS MA^{TIE} contentment, and the people securitie, by getting right quhen thair lywes shall be in question, and 3our lo. praise and thankis for being a good instrument. Thus, resting confident that 3our lo. will tak my boldnes in good part, I rest,

Your lo. affectioned and humble seruitour,

ED^R, 20 Dec. 1622.

A. COLVILLE.

To the right honorable his speciall good lord, MY LORD VICOUNT OF ANNAN.

II. EXTRACT *from the Books of Adjournal, Dec. 2, 1625.*

(Dec. 2, 1625.)—SIR GEORGE ELPHINSTOUN of Blythifwoid, kny^t, ane of the Lordis of his Maiesleis Previe Counfall, producet ane Gift, grantit to him be our lait fouerane lord, James the saxt, of most happie memorie, vnder his hienes Previe Seill, off THE OFFICES of ‘CLERK of OUR JUSTICIARIE GENERALL, AND MAISTER OF CEREMONEIS at the Creatioun of all Erles, Lordis, and Barrones, and of all vther soleme Assambleis, quhair honourable Ceremoneis ar accustomet and necessar to be vsed, within this our said Kingdome of Scotland.—Quhilkis Offices ar now vacand in our handis and at our gift and dispositioun, be dimissioun maid thair of in our handis be SIR ARCHIBALD NAPER of Merchistoun, kny^t, thesaurer deput of our said kingdome of Scotland.’ Dated ‘AT BISSAME, the nyne and tuentie day of August, the 3eir of God 1624, and of our regne the 58 and 22 3eiris.’

The said Sir George gaif his aithe *de fideli administratiōe* in the said Clerkship of Justiciarie, in prefence of the said Justice depute.

No. VII.

REMARKABLE EXAMINATIONS AND CONFESSIONS OF PERSONS ACCUSED OF WITCHCRAFT, SORCERY, &c.

[AMONG the circumstances which peculiarly characterize the earlier Criminal proceedings of SCOTLAND, as well as those of ENGLAND, FRANCE, and GERMANY, &c., none are more prominent than the unmitigated rigour with which the profession as well as the practice of Witchcraft, Sorcery, and Necromancy, were punished. The hecatombs of innocent victims, whose lives were sacrificed to satisfy the gloomy superstitions of Nations termed Christian and civilized, but

who, in reality, were only emerging from a state of semi-barbarism, sufficiently attest the justice of this observation.

After the period of the Reformation from Popery, the Legislators of those countries which had embraced the new Religion, seemed to vie with each other in the zeal which they manifested in 'rooting out from the land' every vestige of the professors of these 'works of darkness.' In Scotland, as the reader has already had sufficient opportunity of remarking, great exertions were made during the reign of KING JAMES VI, when hundreds of helpless creatures were destroyed, under form of law,—for those who were tried before THE HIGH COURT OF JUSTICIARY bore a very small proportion to the very great numbers who were tried and condemned by the LORDS OF REGALITIES, BARON BAILIES, and by the ROYAL COMMISSIONERS. A very striking fact, mentioned by *Baron Hume* in his valuable Commentaries,¹ may be here briefly noted, that 'no fewer than *fourteen* Commissions² for Trial of Witches were granted, for different quarters of the country, *in one sederunt*, of the 7th of November, 1661; which year seems to have been the most fertile period of this sort of accusation!' It is proper to remark, that such Commissioners had very ample powers granted to them; for their Commissions were expressly conceived for the examination and trial, &c. of so many persons, *nominatim*, and a large blank was commonly left for the insertion of such other persons as might be 'de-laited,' or accused, during their sittings. Besides this, their jurisdiction extended over considerable districts of country. As one unhappy creature was almost universally induced to accuse *several others* of the same crime for which he or she was to suffer, and as the evidence taken in one Trial was held to be conclusive in other cases, where the pannels were thus proved to be 'notour Witches,' it was competent for these Commissioners to try any number of persons, and to 'justify them to the death;' a practice which they were by no means slack of performing.

Many very painful Trials for Witchcraft, &c. have already been laid before the reader; but perhaps there cannot be adduced a more touching proof of the nefarious wickedness which must have been perpetrated in Scotland, during the reign of KING JAMES VI, than the following memorandum, which is preserved by *Thomas, Earl of Haddington*, (a noted instrument of the King in all cases, of whatever description,) in his Minutes of Privy Council proceedings.³ He relates, under date December 1, 1608,—'THE ERLE OF MAR declairit to THE COUNSALL, that fūm wemen wer tane in *Broichtoun*, as WITCHES; and being

¹ HUME on *Punishment for Crimes*, II., 559.

² Granted by the Lords of Privy Council.

³ *Haddington MSS.*, A. 4, 22. Adv. Library. While *Sir Thomas Hamilton*, he held the great Offices of *Secretary of State*, *Lord Advocate*, *President of the College of Justice*, &c.; and in all of those stations forwarded his master's views with unremitting zeal and ability.

put to ane Affyfe,¹ and convict, albeit thay perfeverit constant in thair denyell to the end, *5it thay wer BURNIT QUICK,² eftir sic ane crewell maner, that sum of thame deit in despair, renunceand³ and blasphemand; and etheris, HALF BRUNT, brak out of the fyre, and wes cast in QUICK in it agane, quhill⁴ thay wer brunt to be deid.*

It is hardly necessary to remind the reader, that matters were no better in ENGLAND; where, as he must perfectly recollect, the most shocking atrocities were perpetrated, during the reigns of CHARLES I and CHARLES II, and also under the Puritans of OLIVER CROMWELL's time. The infamous proceedings, publicly authorized, of HOPKINS the *Witch-finder*, and other worthless impostors, who pretended to be able, by certain cruel means practised by them, to detect real and counterfeit Witches, are also well known, and are highly calculated to bring discredit on the judicial proceedings of any country. Upon the evidence of these wretches, added to that of the ignorant and superstitious peasantry, and of the equally superstitious Clergy of those times, the lives of hundreds were wantonly sacrificed, to satisfy their diseased appetite for the marvellous; while other misguided individuals, conscientiously no doubt, thought, that by acting thus, they were 'doing God service.'

SIR WALTER SCOTT having so largely discussed this extraordinary subject in his recent work on Demonology and Witchcraft,⁵ it would be as presumptuous as it is unnecessary for the Editor to enter farther into the matter. In that curious and able work, the learned author, in his usual felicitous style, notices numerous Examinations and Confessions of persons accused of Witchcraft, in Scotland, in the sixteenth and seventeenth centuries. Of these, the most remarkable documents unquestionably are the Confessions of ISSOBELL GOWDIE and of JANET BREADHEAD; which, indeed, may safely be pronounced to be by far the most *unique* and wonderful, in the Records of this, and perhaps of any other country. The Editor has been induced, in compliance with the repeated desire of literary friends, contrary to his own private opinion, to annex to this work the CONFESSIONS of these unhappy women, and a few other similar EXAMINATIONS. Such declarations were commonly taken before Presbyteries, or certain Special Commissioners, who usually ranked among their number the leading Clergy of those districts where their hapless victims resided. The details of all such cases, and, in particular, those which are now annexed, are repulsive and shocking to every well-regulated mind; but, as recording the superstitions and crimes common at the period in question to all the civilized

¹ Before the Baron Bailie of the Regality of BROUGHTON, near Edinburgh; one of the most extensive jurisdictions, of that description, in Scotland. ² ALIVE; *i. e.* without having been previously 'wirrit,' or strangled. ³ Renouncing their baptism. ⁴ Until. ⁵ LETTERS on Demonology and Witchcraft, by *Sir Walter Scott, Bart.* Lond. 1830.

nations of Europe, they will by many be deemed, in some measure at least, of historical importance ; although at same time, it must be confessed, they afford a lamentable exhibition of the human mind, at its lowest ebb of degradation.]

I. DEPOSITION of *John Kincaid (Witch-finder)*,¹ relative to the *Devil's mark found on Patrik Waton and Manie Halieburton*.²

AT DIRLTON,³ of 3eiris. The quhilk day, in prefence of All(exan)der Levingtone of (Salt)coitis, James Borthuik, Chalmerlane of Dirlton, Johnie Stalker, bailzie thair, James Fairman, Drem, Mr James Achefoun, in North Beruik, and Williame Daliell, notar, PATRIK (WAT)SON, in West Fentoun, and MENIE HALLYBURTON, his spous, bruided and long fufpect (of) Witchcraft, of thair awne fre-will, vncompellit, heiring that I, *Johnie Kincaid*, vnder fufberyvand, wes in the toune of *Dirltone*, and had some skill and dexteritie in trying of THE DIVELLIS marke, in the perfonis of fuch as wer fufpect to be WITCHES, came to the *Broadhall*, in the *Cafell of Dirlton*, and defyrit me, the faid *Jo. Kincaid*, to vfe my tryall of thame, as I had done on vtheris ; whilk when I had done, I fand the *Divellis marke* vpon the bakfyde of pe faid PATRIK WATSON, a little vnder the point of his left foulder, and vpon the left fyde of the faid MENIE HALLIBURTON hir neck, a little aboue hir left foulder ; whairof thay war not fenfible, nether came furth pairof any bloode, efter I had tryed the famen als exactlie as euer I did any vthers. This I teftifie to be of veritie, vpone my credite and confcience. IN witnes quhairof, I have fufberyvit thir presentis with my hand, day and place foirfaid, befor thir witneffis aboue fpecifeit.

(Sic fufcribitur.) J. K. ALEX. LEVINGTON, witnefs. JA. BORTHUIKE, witnes.
JOHNE STALKER, witnes. JAMES FORMAN, witnes. M. J.
ACHESONE, witnes. W. DALIELL, witnes.

(*Indorfed.*) Teftificat of J(ohnie Kincaid,) finding the witches mark vpone Manie Haliburtoune.

II. CONFESSION of *Manie Haliburton*.⁴

AT DIRLTOUN, the ⁵. of, 1649. In prefence of Johnie (Stalker) bailzie of Dirlton, James Levington, thair, Joⁿ in Lawhill, thair, James Speir, Richard Fergusfon, Wa. Hanady, and Wa. Daliell. Compeirit MANIE HALLIBURTON, prifoner within the *Cafell of Dirlton*, fufpect of the cryme of Witchcraft, dilaited guiltie be AGNES CLERKSON, lait fufferrar for the faid cryme, as alfo be PATRIK WATSONE, spous to the faid Menie, who lykevyle fufferit thairfoir ; and confessit, that auchtein yeir fyne, or thairby, hir dochtir being feik, fcho firft fent for *Patrik Cryftifone in Abirladie*, to cum and cure hir dochtir, and he refuifing, went hirfelf for him, who refused to cure hir ; and within ⁶. dayis thairefter came the DEVILL, in licknes of a man, to hir hous, calling himfelf a phifition, and faid to hir, that he had goode falves (and namelie oylispek⁷) whairwith he wold cure hir dochtir ; and aggrieing with him for fome of his falves, quhilk he gave hir, fho gave him tuo Inglis fhillingis : He than depairted, and promifed to come agane within eight dayes, whilk accordinglie he did ; bot or⁸ he went away the firft tyme, fhe gave him milk and breade ; and *Patrik Watfone* comeing in, he fent for a pynt of Ale : Bot at the fecond comeing, he flayit all night, and vpone the morne airlie (*Patrik* being furth) in came the DIVELL and lay down with hir, (fcho being 3it in bed,) and had carnall copulation with hir, his nature being cold : He defyreit hir to renunce Chrift and hir baptifme, and become his fervand ; quhilk fcho did : And fayes, that hir dochtir had

¹ From Original, in General Register House, Edinburgh.

² He is elsewhere designed 'the common prickier.'

³ Obliterated in Orig.

⁴ From Orig. Gen. Register House.

⁵ Obliterated.

⁶ Left blank in Orig.

⁷ Oil of spike or spikenard.

⁸ Ere ; before.

the wyte¹ of all hir wicid(nefs);² wiffing fho had nevir bene borne.—THIS Depofition was renewed, in all the particulars, by the faid *Manie*, in the forfaid place, on Sunday the firft of Julij, 1649, before Alex^r Levingtoun of Saltcottis, James³, ..., Johne Stalker, ..., W^m Daliell, and Mr Joⁿ Mc^Ghill, minifter at Dirltoun.

M. J. MAKGHILL, ALEX. LEVINGTON, witnes; J. BORTHUIK, JAMES LAUDER, JOHNNE STALKER, W. DALIEL, WILLIAME DALIELL, WALTER MARSHALL.

Jul. 2, AT HADINTOUN. Whilk day, THE PRESBITERIE, having red and confidered the former DEPOSITIONS and CONFESSION of *Manie Haliburton*, find the famyne a fufficient ground for futing⁴ the Judge competent to grant a Commiffion for trying and judging her according to Law.

J. STIRLING, Cl^k.

III. ACT OF PRIVY COUNCIL *anent Geillis Johnnstoun, fufpected of the crime of Witchcraft.*⁵

ANENT our fouerane lordis Letteris, readit at the instance of GELIS JOHNNSTOUN, relict of vinqhull Johnne Duncane in Muffilburgh, makand mentioun, That quhair fome malicious perfonis, hir vnfrendis, haueing dilaitit her to THE PRESBITERIE OF DALKEITH, as a perfon fufpect of WITCHCRAFT, the faid Prifbiterie hes thairvpone convenit hir before thame, and hes haldin hir in proces before them, thir fevin oulkis⁶ bigane; albeit it be of veritie, that the faid complenair is ane honneft woman, who hes levit thir threttie yeiris in the toun of Muffilburgh, in gude fame, credeit, and reputatioun; and wes nevir fufpected nor bruted⁷ with ony fuche develifche and deteftabill doingis; and fcho hes at all tymes presentit hir felff before the faid PRISBITERIE, quhan thay callit for her felff to thair tryall-examinationis, and quhatfumeuir forme of procedoure thay pleafit vfe aganis hir: And althocht the cryme of Witchcraft be ane of the heich pointis of the Crowne, proper to be tryit before his Maieftis Juftice and his deputis, and quhairin the faid PRISBITERIE can have no warrant, auctoritie, nor jurifdictioun to cognofce or determine, nevirtheles, thay continewalie fafche⁸ the faid complenair with citationis and fummondis to compeir before thame, purpoiffie, as appeiris, to bring hir fame, credite, and reputatioun in queftioun, and to lay vpoun hir this foull and havie felander of fa deteftable a cryme, quhairof fcho is moft innocent; and gif thay had ony prefumptionis aganis the complenair of hir guiltynes of the faid cryme, thay fould haue gevin informatioun thairof, outhir⁹ to THE LORD OF REGALITIE quhair fcho duellis, before quhome the faid complenair hes fund caution to be anfuerable for this fame deid, qubanevir fcho falbe callit; or then, to his heynes JUSTICE GENERALL and his deputis; and fould have concurrit, be thair informatioun, to the perfute of hir, and fould not haue vfit fuche a prepofterous forme of proceeding before thame felffis, quibich can produce na kynd of fentence nor determinatioun. IN refpect quhairof, THE MINISTERIS of the faid PRISBITERIE aucht and fould be difchargit of all proceeding aganis the faid complenair, in the mater above writtin, for the cauffis foirfaidis. AND anent the charge gevin to Mr Andro Blakhall, Minifter at Inneretk; Mr Patrik Turnour, Minifter at Borthuik; Mr William Penman, Minifter at Creichtoun; Nathaniell Harlaw, Minifter at Ormeftoun; Mr Alexander Ambroife, Minifter at Newbotle; Mr Johne Nymbill, Minifter at Cranftoun; and Mr George Ramfay, Minifter at Leffwaide; all MINISTERIS of THE PRESBITERIE OF DALKEITH, being convenit for the tyme withiin the Kirk of Dalkeith, to haue compeirit be ane or tua of thair number, fufficientlie instructit, for the ref, before THE LORDIS OF SECRITE COUNSALE, this present day, to haue hard and fene thame difchairgit of all proceeding aganis the faid complenar in the mater foirfaid, and of thair officeis in that part: Lyke as, at mair lenth is contenit in the faidis Letteris, executiounis, and indorfationis thairof. QUHILKIS being callit, and the faid perfewar com-

¹ Blame. ² Wickedness. ³ Obliterated.
General Register House, Edinburgh. ⁶ Weeks.

⁴ Suing; petitioning.

⁷ Reported.

⁵ *Acta S.creti Consilii*,
⁸ Trouble. ⁹ Either.

peirand, be William Duncane hir sone, and Mr George Ramsay, Moderatour of the Presbiterie of Dalkeith; Nathaniell Harlaw, Minister at Ormestoun; Mr Patrik Turnour, Minister at Borthuik; and Mr William Penman, Minister at Creichtoun; with some vtheris of the said Presbiterie being personallie present, the reassonis and allegationis of the pairteis present being hard and considerit be the Lordis of Secrite Counsaile, and thay ryple aduifit thairwith, the Lordis of Secrite Counsaile DISCHARGEIS the Ministeris of the said Presbiterie of all proceeding aganis the said Gelis Johnnstoun, in the mater foirsaid, and of all thair officeis in that pairt; and REMITTIS the said Geillis to be persewit and tryit, outhir before the Justice-Generall and his deputis, or before the Lord of the Regalitie of Dunfermling, as accordis of the Law; but¹ preiudice alwyse to the said Presbiterie to vse all ordinar and lauchfull meanis, quhairby thay may get tryall, be vtheris, of the said *Gelis Johnnstoun* hir practiceis and dealing in the said cryme of Witchcraft; and to gif informatioun thairof to the said Justice Generall and his deputis, or to the Lord of the Regalitie of Dunfermling and his deputis, before quhome justice falbe ministrat, conforme to the lawis of this realme.

IV. CONFESSION of *Jonet Watstone*; and *Notices relative to Christiane Wilstone and Jonet Paisloun, all accused of Witchcraft, June 1661.*²

JONET WATSTONE confessed, that in Apryle last bypast, or thairby, shoe being at the buriell of the *Lady Dalhousie*,³ ther was ane rix-dollar given to *Jean Bughane*, to be pairted among a certain number of poore folks, wherof shoe was one. And the said *Jean Bughane* did run away with the said money, so that schoe gott no pairt of it. And schoe come home to hir awne house, being verrie grieved and angrie at it, wished to have a mendse of *Jean Bughane*. Vpone the which THE DEIVILL apeired vnto her, in the liknes of *ane prettie boy, in grein clothes*; and asked, ‘What aild her? And what amendse shoe wold have, he should give her.’ And at that tyme THE DEIVILL gaive hir his markis; and went away from her in the liknes of *ane blak doug*:—And constantlie, for three dayis thairefter, ther was *a great bee* come to her; and vpone ane morning, when shoe was cheinging her schirt, it did sit down vpone her shoulder, (shoe being naked,) wher shoe had one of the markis.

As also, about the tyme of the last Baille-ffyre night, shoe was at a Meitting in *Newtown-dein* with THE DEAVILL, who had *grein clothes* vpone him, and ane blak hatt vpone his head; wher schoe denyd Chrif, and took her self to be the servant of THE DEIVILL. Wherfor shoe acknoweledged that schoe was, from her heart, sorrowfull for the doeing of it. And likewise, he then gave her a new name, and called her ‘WEILL-DANCING JENOT’—and promised her money at the nixt Meitting.

And also, that vpone ane vther night, THE DEIVILL was verie heavie vpone her in her bed. As also, schoe confessed that *Bessie Moffit*, *Elspeth Grahame*, and *Jenot Mikeljohn* come to her house, and tooke her away to that Meating; when they all danced together: At which tyme, when schoe renuned her baptifme, THE DEIVILL laid his hand vpone her head, and bad her ‘give all ower to him that was vnder his hand,’ and shoe did so. Quhilk haill premiffes shoe confessed, in preffens of the vnder subferyvers, without compulsione.

W. CALDERWOOD, (Minister of Dalkeith,) WILLIAME SCOTT, (Bailie of Dalkeith.)

AND. MACMILLONE, witnes. ROB^T HARDIE, witnes. JOHNE FOORD, witnes.

HENRIE WILSTONE, witnes. JA. CALDERWOOD, witnes. ALEX. A: D DICKSONES mark.

WILLIAM BRYSON, witnes. JA. VTERSIDE, witnes.

¹ Without. ² Original in *MS. Coll. of Soci ty of Antiquaries of Scotland*. This Proof was led under a Commission, June 6, 1661, ‘direct be THE KINGIS MAJESTIE, with consent of the Estaitis of Parliament,’ to Sir William Murray of Newtown, Sir James Richardson of Smeiton, Patrick Scott of Langshaw, Major John Biggar of Woolmot, &c.; who examined a great variety of WITCHES. Their CONFESSIONS, however, are uninteresting and commonplace, with the exception of this and the other Extracts which follow. ³ LADY MARGARET CARNEGIE, daughter of David, Earl of Southesk, spouse of William, Lord Ramsay, created *Earl of Dalhousie*, June 29, 1633.

V. DEPOSITION *as to the Devil carrying off a Witch in a Whirlwind, &c.*

AT DALKEITH, the 10 of Junij, 1661.—THE quhilk day, WILLIAM SCOTT, Bailiffe, haveing ordained some of the neighbours in the toune of Dalkeith to be in redines, the morrow eftir, for guardeing of CHRISTIANE WILSONE, a Witch, to Nidrie, to be confronted their by ane vther Witche; and Johne Steivin, being one of the number ordained to be in redines, said to JENNOT COOKE,¹ that he wes 'goeing the morrow to convoy the said CHRISTIANE to Nidrie,' as afoirsaid, and that he wold goe and mak his gun cleane, for that purpose; to the which Jennot answaired, 'Will not yow think it a sport, if THE DEVILL raise a whirrell of wind, and tak her away from among yow by the gette² the morrow!' And it fell out, that in passing a burne,³ when they wer nigh Nidrie, their arose futehe a sudden tempest of wind, which was like to blow the compaignie off their foot—and it did blow the said Christiane Wilfone down in the water . . .⁴, so that for a long tyme they could not gett her vp againe—it being a faire and calme day, both befor and efter. WITNESSES, Johne Steivin, James Wilfone, candill maker, Thomas Richardfone, wright, Bessie Waker, Jonett Bruntoun, and James Blaikie, baxter.⁵

JOHNE STIWENE, witnes. James I. W. Wilfones mark.

VI. DEPOSITION *of John Kincaid, in Tranent, 'the comon pricker,' as to finding the Devil's mark on Jonet Paistoun.*

DALKEITH, 17 Junij, 1661.—THE quhilk day, JONET PAISTOUN, being dilaitit, as is afoirsaid, THE MAGISTRAT and MINISTER caufed *Johne Kincaid*,⁶ in Tranent, *the comon pricker*, to prik her—and found tuo marks wpon hir, which he called THE DEVILL his markis, which apeared indeid to be so, for shoe did nather find the prein⁷ when it was put into any of the said markis, nor did they blood when they were takin out again. And quhan shoe was asked, 'Quhair shoe thocht the preins wer put in?' Shoe pointed at a pairt of hir body distant from the place quhair the preins wer put in—they being preins of *thrie inches*, or pairabout, in lenth. Quhilk *Johne Kincaid* declairis upon his oath, and verifies by his subscription to be true. WITNESSES pairto, Mr W^m Calderwood, Minister at Dalkeith, and Williame Scott, Bailje: Martin Stevinsone and Thomas Calderwood, Elders; Major Archibald Waddell, Johne Hunter, David Douglas.

I. K. W. CALDERWOOD, Minister. WILLIAME SCOTT, Bailje.

MARTIN STEVENSONE, Elder. THOMAS CALDERWOOD, Elder.

VII. CONFESSIONS *of Iffobell Gowdie, spous to John Gilbert, in Lochloy.*

(1.) ISSOBELL GOWDIES FIRST CONFESSION.

AT AULDERNE,⁸ the threttein day of Aprill, 1662 yeiris. IN PRESENCE of MASTER HARIE FORBES, Minister of the Gospell at Alderne; WILLIAM DALLAS of Cantrey, Shereffe deput of the thereffdom of Nairne; THOMAS DUNBAR of Graing; ALEXANDER BRODIE, Y^r of Leathin; ALEXANDER DUNBAR of Boath; JAMES DUNBAR, appeirant therof; HENRIE HAY of Brightmanney; HEW HAY of Newtowne; WILLIAM DUNBAR of Clune; and DAVID SMITH, and JOHNE WEIR, in Aldern; WITNESSES to THE CONFESSION efter specifreit, spokin furth of the mouth of ISSOBELL GOWDIE, *spous to Johne Gilbert, in Lochloy.*

THE quhilk day, in presence of me, JOHNE INNES, *Notar Publict*, and Witnesfes abownamet, all vnder subfcrywand, the said ISSOBELL GOWDIE, appeiring penitent for hir haynows finnes of Witch-

¹ Another Confessing Witch.

² By the way.

³ Rivulet.

⁴ Obliterated—but it looks like '*streyme*.'

⁵ Baker.

⁶ The counterpart of the English *Mathew Hopkins*, the Witch-Finder, whose villainous impostures deprived many poor creatures of their wretched existence.

⁷ A long plu, or bodkin, which this fellow used for pricking.

⁸ A Parish and Burgh of Barony in the Shire of NAIRN, on the Murray Frith.

craft, and that tho haid bein ower lang in that service; without ony compulstouris,¹ proceidit in hir CONFESSIÖNE, in maner efter following, to wit. As I wes goeing betuix the townes² of *Drumdevin* and *the Headis*, I met with THE DIVELL, and ther covenanted, in a maner, with him; and I promeisit to meit him, in the night time, in *the Kirk of Alderne*; quhilk I did. And the first thing I did ther that night, I denyed my baptisme, and did put the on of my handis to the crowne of my head and the vther to the sole of my foot, and then renuncet all betuixt my two handis, ower to *the Divell*. He wes in the Readeris dask, and a blak book in his hand.³ *Margret Brodie*, in *Alderne*, held me vp to *the Divell* to be baptisid be him; and he marked me in the shoulder, and fuked owt my blood at that mark, and spowit it in his hand, and, sprinkling it on my head, said, ‘*I baptise thé, JANET, in my awin name!*’ And within a quhill we all remoowed. The nixt tym that I met with him ves in *the New Wardis of Inshoch*, and haid carnall cowpulation and dealling with me. He wes a meikle, blak, roch⁴ man, werie cold; and I found his nature als cold within me as spring-wall-water. Sometymes he haid buitis and sometymes shoes on his foot;⁵ but still his foot ar forked and cloven. He völd be sometymes with ws lyk a dear, or a rae. *Johne Taylor* and *Janet Breadhead*, his vyff,⁶ in *Belmakeith*, ... *Douglas*, and I my self, met in *the Kirk-yaird of Nairne*, and ve raifed an vnchristened child owt of its greaff; and at the end of *Breadleyis* corn-field-land, just opposit to *the Milne of Nairne*, we took the said child, with the naillis⁷ of our fingeris and toes, pikles of all fortis of grain, and blaidis of keall,⁸ and haked⁹ thaim all verie smail, mixed altogither; and did put a pairt therof among the muk-heapes¹⁰ of *Breadleyes* landis, and therby took away the fruit of his cornes, &c.; and we pairted it among two of our COEVENS.¹¹ Whan we tak cornes at *Lambes*,¹² we tak bot abowt two sheawes, whan the cornes ar full; or two stokis of keall, or therby, and that giwes ws the fruit of the corn-land, or keall-yaird, whair they grew:¹³ And it may be, we will keip yt while *Yewll* or *Pace*,¹⁴ and than deyvd it amongst ws. Ther ar threttein perfones in my COVEN.¹⁵

The last tyme that ovr COVEN met, we, and an vther COVEN, wer dauncing at *the Hill of Earlsfeat*; and befor that, betwixt *Moynes* and *Borgholl*; and befor that we ves beyond *the Meikle-burne*; and the vther COVEN being at *the Downie-hillis*, we went from beyond *the Meikle-burne*, and went besydl them, to the howffis at *the Wood-end of Inshoch*; and within a qwhyll went hom to our howffis. Befor *Candmas*, we went be-east *Kinlossie*, and ther we yoaked an plewghe of paddokis.¹⁶ THE DIVELL held the plewgh, and *Johne Yowngie* in *Mebefowne*, our Officer, did drywe the plewgh. Paddokis did draw the plewgh, as oxen; quwickens wer sowmes,¹⁷ a riglen’s horne wes a cower,¹⁸ and an piece of an riglen’s horne wes an fok. We went two feuerall tymes abowt; and all we of the COEVEN went still wp and downe with the plewgh, prayeing to THE DIVELL for the fruit of that land, and that thistles and brieris might grow ther.

When we goe to any hous,¹⁹ we tak meat and drink; and we fill wp the barrellis with ovr oven²⁰

¹ Indicating, in the outset, that no TORTURE or compulsion had been resorted to, for the purpose of extorting Confession; but that she came forward, and voluntarily made her Declaration, bewailing her former offences. ² Farmsteadings.

³ It is a singular circumstance, that in almost all the CONFESSIONS of Witches, their initiation, and many of their meetings, are said to have taken place within CHURCHES, Churchyards, and consecrated ground; and a certain ritual, in imitation, or mockery, of the forms of the Church, is uniformly said to have been gone through.

⁴ Rough; hairy; *hirsute*.

⁵ Throughout this Confession, *foot* is used for *feet*.

⁶ See her Confession, which follows this, (No. VIII.) ⁷ Parings of the nails. In such incantations, the nails and joints, &c. of dead men were commonly made use of.

⁸ *Kail-blades*; the leaves of colewort.

⁹ *Hacked*; chopped.

¹⁰ Dung-heaps; *middens*.

¹¹ Companies; Witches’ Conventicles. Perhaps from Lat. *convocare*. The word *core* is still in use (in the Gipsy, flash, or slang Vocabulary) as an associate, *chum*, or companion, &c.

¹² Lammas: 1st August.

¹³ This symbolical mode of taking the fruit, crop, or produce of land, &c., is frequently alluded to in Witch-Trials. The soil apparently bore only straw and empty ears; but the real produce was, in due season, conveyed to the barns of the enchanter. The milk of a dairy was taken by means of a hair *telher*, rope, or halter, passing under the door, and attached to one of the stalls where the cattle stood, &c. The Witch procured the entire produce by ‘*milking the telher!*’ Another method is afterwards recited in this CONFESSION.

¹⁴ Until Christmas or Easter.

¹⁵ The number *thirteen* is still proverbially called ‘*the Devil’s dozen*,’ in Scotland.

¹⁶ Yoked a plough of frogs.

¹⁷ Dog-grass, or *quick-grass*, served for *sowmes* or *soams*; being the traces, chains, or iron links, by which, of old, the oxen were yoked to the plough. The *sowme* (*soyme*) was fastened by a hook to the *soule* or *sole* (swivel.)

¹⁸ The coulter of the plough was formed of the horn of a half-castrated ram, called a *riglen*; q. d. a *ridgel-ram*.

¹⁹ Enter by stealth.

²⁰ *Awin*; *oven*.

piß again; and we put boosomes¹ in our beds with our husbandis, till ve return again to them. We wer in the *Earle of Murreyes*² hous in *Deruway*, and ve gott anewgh ther, and did eat and drink of the beft, and browght pairt with ws. We went in at the windowes. I haid a little horfe, and wold fay, ‘HORSE AND HATTOCK, IN THE DIVELLIS NAME!’³ And than ve vold flie away, quhair ve vold, be ewin⁴ as flawes wold flie wpon an hie-way. We will flie lyk flawes quhan we pleas; wild-flawes and corne-flawes wilbe horfes to ws, an⁵ ve put thain betwixt our foot, and fay, ‘HORSE AND HATTOCK, IN THE DIVELLIS nam!’ An quhan any fies thes flawes in a whirlewind, and doe not fanc-tifie them felues,⁶ we may shoot them dead at owr pleasour. Any that ar shot be vs, their fowell will goe to Hevin, bot ther bodies remainis with ws, and will flie as horfis to ws, als small as flawes.⁷

I was in the *Downie-hillis*, and got meat ther from THE QWEIN OF FEARRIE, mor than I could eat. The *Qwein of Fearrie* is brawlie clothed in whyt linens, and in whyt and browne cloathes, &c.; and THE KING OF FEARRIE is a braw man, weill favoured, and broad faced, &c.⁸ Ther wes elf-bullis rowtting and floylling wp and downe thair, and affrighted me.⁹

¹ Besoms; brooms.

² Alexander Stewart, fourth Earl of Moray.

³ The following remarkable circumstances were communicated to the ingenious John Aubrey, Esq., F.R.S., by one Stewart, a tutor in the family of JAMES, second LORD DUFFUS; from whose recital, Stewart states, he had it, and that his lordship had it from his father, Alexander, first Lord Duffus, who had, in like manner, heard the tradition from William Sutherland of Duffus, grandfather of James, Lord Duffus, who died about the year 1626. It closely corresponds with the particulars contained in the Depositions of Isobel Gowdie and Janet Breadhead, in reference to this branch of FAIRY SUPERSTITION. As Aubrey's work is now exceedingly scarce, little apology is required for quoting the interesting communication, which he has, fortunately, preserved at length:—

‘As soon as I read your letter of May 24, (1694,) I called to mind a story which I heard long ago, concerning one of the LORD DUFFUS (in the shire of Murray) his predecessors; of whom it is reported that, upon a time, when he was walking abroad in the fields, near to his own house, he was suddenly carried away, and found the next day at Paris, in the FRENCH KING's cellar, with a silver cup in his hand. That, being brought into the KING's presence, and questioned by him, “Who he was?”—and “how he came thither?” He told his name, his country, and the place of his residence; and that on such a day of the month (which proved to be the day immediately preceding), being in the fields, he heard the noise of a whirlwind, and of voices crying “HORSE AND HATTOCK!” (this is the word which the FAIRIES are said to use when they remove from any place;) whereupon he cried “HORSE AND HATTOCK!” also; and was immediately caught up and transported through the air, by the FAIRIES, to that place: Where, after he had drank heartily, he fell asleep, and before he awoke, the rest of the company were gone, and had left him in the posture wherein he was found. It is said THE KING gave him the cup which was found in his hand, and dismissed him.

‘This story (if it could be sufficiently attested) would be a noble instance for your purpose; for which cause I was at some pains to enquire into the truth of it, and found the means to get the present Lord Duffus's opinion thereof; which shortly is, that there has been and is such a tradition; but he thinks it fabulous. This account of it his Lordship had from his father, who told him that he had it from his father, the present Lord's grandfather. There is yet an old silver cup in his lordship's possession still, which is called “THE FAIRY CUP,”—but has nothing engraven upon it except the arms of the Family.

‘The gentleman by whose means I came to know the Lord Duffus's sentiment of the foregoing story, being tutor to his lordship's eldest son, told me another little passage of the same nature, whereof he was an eye-witness. He reports, that when he was a boy at school, in the town of FORRES, yet not so young but that he had years and capacity both to observe and remember that which fell out, he and his school-fellows were, upon a time, whipping their tops in the Churchyard, before the door of the Church. Though the day was calm, they heard a noise of a wind, and, at some distance, saw the small dust begin to arise and turn round; which motion continued advancing till it came to the place where they were: Whereupon they began to bless themselves. But one of their number (being, it seems, a little more bold and confident than his companions) said, “HORSE AND HATTOCK WITH MY TOP!” And immediately they saw the top lifted up from the ground, but could not see what way it was carried, by reason of a cloud of dust which was raised at the same time. They sought for the top all about the place where it was taken up, but in vain; and it was found afterwards in the Churchyard, on the other side of the Church. Mr Stewart (so is the gentleman called) declared to me that he had a perfect remembrance of this matter.—Aubrey's *Miscellanies*, p. 209.

⁴ Like; even as; in like manner as.

⁵ And; if.

⁶ The children in the kirkyard of Forres (see the preceding Note on HORSE AND HATTOCK) appear to have been adepts in this branch of the Fairy creed; which was, no doubt, familiar to all classes of the peasantry of Scotland, as numerous traces of it are to be found in various districts, at the remotest distance from each other.

⁷ The above details are, perhaps, in all respects, the most extraordinary in the history of WITCHCRAFT of this or of any other country. Any comment would only weaken the effect of such very remarkable descriptions. ⁸ It is a thousand pities that the learned Examiners have so piously declined indulging the world with the detailed description of these illustrious personages. Under the singularly descriptive powers of Isobel Gowdie, much might have been learned of FAIRY-LAND and its Mythology.

⁹ It is evident that Isobel's gossiping had again been cut short here, as irrelevant. Not so the more objectionable parts of her Confession, which were obviously drawn out of her, and listened to with the utmost complacency by her reverend inquisitors.

When we tak away any coves milk, we pull the tow, and twyn it and plaitt it in the vrong way, in *the Divellis* name; and we draw the tedder (sua maid) in betuixt the coves hinder foot,¹ and owt betuixt the coves forder foot, in *the Divellis* name; and therby tak with ws the kowes milk. We tak sheips milk ewin fo. The way to tak or giev bak the milk again, is to cut that tedder. Whan we tak away the strenth of anie perfonas eall,² and gieves it to an vther, we tak a litle qwantitie owt of each barrell or stand of eall, and puts it in a flowp, in *the Divellis* nam; and, in his nam, with owr awin handis, puttis it amongst an vtheris eall, and gives her the strenth and substance and heall of hir neighbourhood eall. And to keip the eall from ws, that we haue no power of it, is to sanctifie it veill. We get all this power from *the Divell*; and when ve feik it from him, ve call him 'owr LORD!'

Johne Taylor and *Janet Breadhead*, his wyff, in Bellnakeith, *Bessie Wilfone*, in Alderne, and *Margret Wilfone*, spows to *Donald Callam* in Alderne, and I, maid an pictur of clay, to distroy *the Laird of Parkis* meall³ children. *Johne Taylor* browght hom the clay, in his plaid newk;⁴ his wyff brak it verie small, lyk meall,⁵ and sifted it with a siew,⁶ and powred in water among it, in *the Divellis* nam, and vrought it werie fore, lyk rye-bowt;⁷ and maid of it a pictur of *the Lairdis* fones. It haid all the pairtis and merkis of a child, such as heid, eyes, nose, handis, foot, mowth, and litle lippes. It wanted no mark of a child; and the handis of it folded down by its fydes. It was lyk a pow,⁸ or a flain gryce.⁹ We laid the face of it to the fyre, till it strakned;¹⁰ and a cleir fyre round about it, till it ves read lyk a cole.¹¹ After that, we wold rost it now and then; each other day¹² ther wold be an piece of it weill rosten. *The Laird of Parkis* heall maill children by it ar to suffer, if it be not gotten and brokin, als weill as thes that ar borne and dead alreadie. It ves still putt in and taken out of the fyre, in *the Divellis* name. It wes hung wp wpon an knag. It is yet in *Johne Taylor's* hows, and it hes a cradle of clay about it. Onlie *Johne Taylor* and his wyff, *Janet Breadhead*, *Bessie* and *Margret Wilfones* in Alderne, and *Margret Brodie*, thair, and I, wer onlie at the making of it. All the multitud of our number of WITCHES, of all the COEVENS, kent¹³ all of it, at owr nixt meitting after it was maid. And *the Witches* yet that ar vntaken, haw thair awin poweris, and owr poweris quhillk we haid befor we wer takin, both.¹⁴ Bot now I haw no power at all.

Margret Kyllie, in, is on of the vther COVEN, *Messie Hirdall*, spous to *Alexander Ross*, in Lonheid, is on of thaim; hir skin is fyrie. *Iffobell Nicoll*, in Lochley, is on of my COEVEN. *Alexander Elder*, in Earleseat, and *Janet Finlay*, his spows, ar of my COEVENS. *Margret Hasbein*, in Moynes, is on; *Margrat Brodie*, in Alderne, *Bessie* and *Margrat Wilfones*, thair, and *Jean Marten*, ther, and *Elspet Nishie*, spows to *Johne Mathow*, ther, ar of my COVEN. The said *Jean Mairten* is MAIDEN¹⁵ of owr COVEN. *Johne Young*, in Mebestowne, is OFFICER to owr COEVEN.

Elspet Chisholme and *Iffobell More*, in Alderne; *Magie Brodie*, ..., and I, went in to *Alexander Cumings* litt-hows,¹⁶ in Alderne. I went in, in the likenes of a kea,¹⁷ the said *Elspet Chisholm* wes in the shape of a catt. *Iffobell Mor* wes a hair, and *Magie Brodie* a catt, and ¹⁸ We took a threid of each cullor of yairne that wes in the said *Alexander Cumings* his litt-fatt,¹⁹ and did cast thrie knots on each threid, in *the Divellis* name; and did put the thriedis in the fatt, wither-fones²⁰ about in the fatt, in *the Divellis* name; and thairby took the heall strenth of the fatt away,

¹ Feet. ² Strong ale. ³ Male. ⁴ In the nook, or corner, of his plaid. ⁵ Pounded, or powdered it, like meal.

⁶ To make the plaster fine, and free from earthy particles. ⁷ Probably a sort of stir-about, or hasty-pudding, made of rye-flour.

⁸ In another Deposition it is thus expressed, 'lyk a pow or feadge.' A feadge was a sort of scone, or roll, of a pretty large size. Perhaps this term signifies, as large as the quantity of dough or paste necessary for making this kind of bread.

⁹ A flayed sucking pig, after being scalded and scraped. ¹⁰ Shrivelled with the heat.

¹¹ Red like a coal. ¹² Each alternate day. ¹³ Knew. ¹⁴ This is something new in Witch stories, and lets in additional light on these charms.

¹⁵ Each Coven appears to have had an OFFICER for the men, and a MAIDEN for the women; but whether the province of these personages was to preside over them, or to act as messengers, to call them together, does not seem so certain.

¹⁶ Dye-house. ¹⁷ Jackdaw.

¹⁸ This and the preceding spaces are left blank in the Deposition. ¹⁹ Dying-vat. ²⁰ Withershins, contrary to the direction and ordinary course of the sun.

that it could litt nothing bot onlie blak, according to the culor of *the Divell*, in quhoes nam we took away the strenth of the rycht culouris that wes in the fatt!

ALL quhilkis of the premisses, fwa spokin and willinglie Confest and declairit furth of the mowth of the said *Iffobell*, in all and be all thingis as is abow sett downe, I, the said *Johne Innes*, Notar Publict, haw writtine thir presenttis; and with the saidis Witnesses abow namet, in farder testimonie and witnessing of the premisses to be of weritie, We haw subferywit the samen with our handis, day, yeir, and place aboue specifeit.

JOANNES INNES, Notarius Publicus.¹

MR HARY FORBES, Minister at Auld Earn, Attestis.

A. BRODIE, witnes to the said Confessione.

HEW HAY of Newtown, Attestes.

W. SUTHERLAND of Kinsterie, Attestis these Confessionis.

W. DOLLAS of Cantray, Shereff-deput, Attestis.

HEN. ROSE, Minister at Nairne, Attestis the forsaid

Declaratione, as to the principal substantialis.

GEORGE PHINNIE, in Kirkmichael, Attestis.

JO. WEIR, in Alderne, Attestis.

(2.) ISSOBELL GOWDIES SECOND CONFESSION.

ATT ALDERNE, the third day of May, 1662 yeiris, abowt the howris of two or thrie in the efternoone, or therby: IN prefence of MASTER HARRIE FORBES, &c.²

THE quhilk day, in prefence of me, *Johne Innes*, Notar Publict, and Witnesses, all vnder-subferywand, the said ISSOBELL GOWDIE, professing repentance, &c.³ Efter that tym ther vold meit bot fomytymes a COVEN, fomytymes mor, fomytymes les; bot a Grand Meitting vold be about the end of ilk Quarter. Ther is threitein perfones⁴ in ilk Coeven; and ilk on of vs has an SPRIT to wait wpon ws, quhan ve, pleas to call wpon him. I remember not all the Spritis names; bot thair is on called 'SWEIN,' quhilk waitis wpon the said Margret Wilfon in Alderne; he is still⁵ clothed in grafs-grein; and the said Margret Wilfon hes an niknam called, 'PIKLE NEIREST THE WIND.' The nixt Sprit is called 'RORIE,' who waitis wpon Bessie Wilfone, in Alderne; he is still clothed in yallow; and hir nikname is 'THROW THE CORNE YAIRD,' [.].⁶ The third Sprit is called 'THE RORING LYON,' who waitis wpon Iffobell Nicoll, in Loehlow; and [he is still clothed] in sea-grein; her niknam is 'BESSIE RULE.' The fowrth Sprit is called 'MAK HECTOR,' qwho [waitis wpon Jean] Martein, dawghter to the said Margret Wilfon; he is a yowng-lyk Devill, clothed still in grafs-green. Jean Martein is] MAIDEN to the Coven that I am of; and hir nikname is 'OVER THE DYKE WITH IT,' becaus THE DIVILL [always takis the] Maiden in his hand nix him, quhan ve danche Gillatrypes;⁷ and quhan he vold lowp from he and she will say, 'Ower the dyk with it!' The nam of the fyft Sprit is 'ROBERT THE [RULE,' and he is still clothed in] sadd-dun, and seimis to be a Comander of the rest of the Spritis; and he waittis wpon Margret Brodie, in Alderne. [The name of the saxt Sprit] is called 'THEIFF OF HELL WAIT WPON HIR SELFIE,' and he waitis also on the said Bessie Wilfon. The name of the sevint [Sprit is called] 'THE READ REIVER,' and he is my owin Spirit, that waittis on my felse, and is still clothed in blak. The aucht Sprit [is called] 'ROBERT THE JACKIS,' still clothed in dune, and seimes to be aiged. He is ane glaiked gowked Spirit! The woman's [nikname] that he waitis on, is 'ABLE AND STOWT!'⁸ The nynt Sprit is called 'LAING,' and the woman's nikname that he waitis wpon is 'BESSIE BAULD.'⁹ The tenth Sprit is named 'THOMAS A FEARIE,' &c.¹⁰—Ther wilbe many vther Divellis, waiting wpon [our] MAISTER DIVELL; bot he is bigger and mor awfull than the rest of the Divellis, and they all reverence him. I will ken them all, on by on, from vtheris, quhan they appeir lyk a man.

¹ His Latin *docquet*, with his motto, '*Amor meus cruci fixus*. 1661,' are affixed. It is unnecessary to preserve this, as it is in common form. ² As in preceding Deposition. ³ The same preamble is repeated, with the account of her baptism and carnal dealing, &c., in similar terms as in her preceding Confession. ⁴ The DEIL's dozen. ⁵ Ever; always. ⁶ This paper is unluckily very much mutilated at the ends of the lines; which mutilation commences here.

Where the sense can be made out, the words are conjecturally supplied, within brackets; if not, a small blank is left in this transcript. ⁷ Probably a dance then popular among the vulgar. ⁸ Viz. Bessie Hay. ⁹ Viz. Elspet Nishie.

¹⁰ Issobell, as usual, appears to have been stopped short here by her interrogators, when she touched on such matters.

Quhen we reafe the wind, we tak a rag of cloth, and weitts¹ it in water; and we tak a beetle² and knokis the rage³ on a stane, and we fay thryfe ower,

‘ I KNOK this ragg wpon this stane,
To raise the wind, in THE DIVELLIS name;
It fall not lye⁴ vntill I please againe!’

[Whan] we wold lay the wind, we dry the ragg, and fay (thryfe ower,)

‘ WE lay the wind in THE DIVELLIS name,
[It fall not] ryfe quhill we (or I) lyk to reafe it againe!’

And if the wind will not lye instantlie [after we fay this,] we call wpon ovr Spirit, and fay to him,

‘ THIEFFE! THIEFFE! conjure the wind, and caws it to [lye].’

We haw no power of rain, bot ve will reafe the wind quhan ve pleas.—He maid vs believ [.] that ther wes no GOD befyd him.

As for Elf-arrow-heidis, THE DIVELL thapes them with his awin hand, [and syne deliueris thame] to Elf-boyes, who whyttis and dightis⁵ them with a sharp thing lyk a paking neidle; bot [quhan I wes in Elf-land?] I saw them whytting and dighting them. Quhan I wes in the Elfes howflis, they will haw werie them whytting and dighting; and THE DIVELL giwes them to ws, each of ws so many, quhen Thes that dightis thaim ar litle ones, hollow, and bofs-baked!⁶ They speak gowftie⁷ lyk. Quhen THE DIVELL giwes them to ws, he fayes,

‘ SHOOT thes in my name,
And they fall not goe heall hame!’

And quhan ve shoot these arrowes (we fay)—

‘ I SHOOT yon⁸ man in THE DIVELLIS name,
He fall nott win heall hame!
And this falbe alwa trw;
Thair fall not be an bitt of him on lieiw!’⁹

We haw no bow to shoot with, but spang¹⁰ them from of the naillis of our thowmbes. Som tymes we will misse; bot if thay twitch,¹¹ be it beaft, or man, or woman, it will kill, tho’ they haid an jack¹² wpon them. Qwhen we goe in the thape of an haire, we fay thryfe ovr:

‘ I SALL goe intill ane haire,
With sorrow, and sych, and meikle caire;
And I fall goe in THE DIVELLIS nam,
Ay whill I com hom [againe!]’

And instantlie we start in an hair. And when we wold be owt of that thape, we vill fay:

‘ HAIRE, [haire, God fend thé caire!]
I am in an hairis liknes juft now,
Bot I falbe in a womanis liknes ewin [now.]’

When we vold goe in the liknes of an cat, we fay thryfe ower,

‘ I SALL goe [in till ane catt,]
[With sorrow, and sych, and a blak]shot!
And I fall goe in THE DIVELLIS nam,
Ay quhill I com hom againe!’

¹ Wet. ² A piece of flatted wood, somewhat resembling a cricket-bat, which washerwomen use for knocking clothes, in cleansing them. ³ Rag. ⁴ Be allayed. ⁵ Shapes and trims them as a carpenter, with edged-tools. ⁶ Boss also signifies hollow, or empty. Perhaps this expresses that these Elves were diminutive and hump-backed creatures resembling the *trows* or *trolls* of FAIRY SUPERSTITION; whose propensities are uniformly described as being malignant, and hostile to mankind. ⁷ Roughly; crossly; gruffly. ⁸ Yonder. The preceding and following rhymes are probably *unique*, even in the history of TRIALS for WITCHCRAFT, and show, in a very forcible manner, the criminality of the bigoted, though learned and well-intentioned, individuals who dragged forward such wretches to public trial and an ignominious death. ⁹ On life; *alive*. ¹⁰ Jerk. ¹¹ Touch. ¹² A coat of mail; defensive armor.

And if ve [wold goe in ane craw, then] we fay thryfe ower :

‘ I SALL goe intill a craw,
With forrow, and fych, and a blak [thraw !
And I fall goe in the Divellis nam,]
Ay quhill I com home again !’

And quhen ve vould be owt of thes shapys, we fay :

‘ CATT, catt, (or craw, craw,) [God] fend thé a blak fhott ! (or blak thraw !)
I wes a catt (or craw) just now,
Bot I falbe [in a woman’s liknes evin now.]

Catt, catt, (or craw, craw,) God fend the a blak shot ! (or a blak thraw !)

Giff we, in the [shape of an catt, an craw, an] haire, or any vther liknes, &c., go to any of our neighbouris howffis, being Witches, we will [fay,]

[‘ I (or we) CONJURE] thé Goe with ws (or me) !’

And presentlie they becom as we ar, either cats, hearis, crowes, &c., and goe [with ws whither we wold. Quhan] we wold ryd,¹ we tak windle-strawes, or been-flakes,² and put them betwixt owr foot,⁵ and fay thryfe,

‘ [HORSE] and hattok; horfe and goe,
Horfe and pellattis, ho ! ho !’⁴

And immediatlie we flie away whair [euir we wold] ; and least our husbandis sould mis vs owt of owr beddis, we put in a boofom, or a thrie [leggit stoole befyde thame,] and fay thryfe ower,

‘ I LAY down this boofom (or stooll,) In THE DIVELLIS name,
Let it not steir [Qubill I] com again !’

And immediatlie it seimis a voman, befyd owr husbandis.

Ve can not turn in the lik[n⁵ of] Quhen my husband sold beeff, I vfed to put a fwellowes feather in the hyd of the beaft, and [fay thryfe,]

‘ [I] PUTT owt this beeff in THE DIVELLIS nam,
That meikle silver and good pryce com hame !’

I did ewin so [qubeneuir I putt] furth either horfe, noat,⁶ vebs,⁷ or any vther thing to be fold, and still⁸ put in this feather, and said the [samu wordis thryfe] ower, to caws the comodities sell weill, &c. thryfe ower,

Owr Lord to hunting he [is gone]
. marble stone,

He sent vord to Saint Knitt ⁹

[Quhan we vould heall ony for, or brokin limb, we fay thryfe ower,]

.
.

He pat the blood to the blood, Till all vp flood ;

The lith to the lith, Till all took with ;

Owr Ladie charmed hir deirlic Sone, With hir tooth and hir towng,

And hir ten fingeris——

In the name of THE FATHER, THE SON, and THE HALIE GAIST !¹⁰

¹ Ride.

² Bean-stalks.

³ For *fect*.

⁴ See Note to ‘ *Horse and hattock*,’ p. 604.

⁵ There is

a tradition in MORAYSHIRE, that Witches could not appear in the shape of a dove or a lamb ; the one being emblematical of THE HOLY SPIRIT, the other being the emblem of the AGNUS DEI. Perhaps the *hiatus* might not improperly have been so supplied.

⁶ *Nolt*, cattle.

⁷ Webs of cloth.

⁸ Uniformly ; constantly ; always.

⁹ After this

fragment, a considerable portion of the MS. is unfortunately torn off. It is probable that the two first lines of the next Charm are mutilated.

¹⁰ It has been often remarked by the Editor, in the course of the numerous WITCH TRIALS which occur in this Collection, that a great proportion of the charms, in use to be repeated by these unhappy women, were actually paraphrases of portions of the *Mass-Book*—and in some cases, such as in the Case of ANNIE SAMSON, there appears to have been used doggerel versions of THE CREED, &c. ! Others were taken from ancient popular rhymes and songs, such as the above fragment, ‘ *Owr Lord to hunting he is gone*,’ &c., which, unfortunately, is mutilated.

And this we say thryfe over, straiking¹ the for, and it becomes heall. 2^{di}, For the BEAN-SHAW,² or pain in the heance,³—‘WEE ar heir thrie *Maidens* charming for the bean-straw; pe man of the Midle-earth, blew beaver, land-feaver, maneris of flooris, the Lord fleigged⁴ the Feind with his holy candles and yeird foot stone!—Thair she fittis, and heir she is gon!—Let hir nevir com heir again!’—3^{di}, For the FEAPERIS, we say thrife over, ‘I FORBID the qwaking-feavers, the fea-feaveris, the land-feaveris, and all the feaveris that ewir God ordained, owt of the head, owt of the heart, owt of the bak, owt of the fydis, owt of the kneysis, owt of the thieghes, fra the pointis of the fingeris to the nebes⁵ of the toes; owt fall the feaveris goe, [fom] to the hill, fom to the hap, fom to the stone, some to the stok. In Saint Peiteris nam, Saint Paullis nam, and all the Saintis of Hevin: In the nam of THE FATHER, THE SONE, and of THE HALIE GOST!’⁶—AND when we took the frwit of the fishes from [the] fisheris, we went to the shore, befor the boat wold com to it; and we wold say, on the shore-fyd, thrie feuerall tymes ower,

‘THE fisheris ar gon to the sea,
And they vill bring hom fishe to me;
They will bring them hom intill the boat,
Bot they fall get of thaim bot the smaller fort!’

So we either steall a fish, or buy a fish, or get a fish from them [for nowght,] an or ma.⁷ And with that we haw all the fruit of the heall⁸ fishes in the boat; and the fishes that the fishermen thaim selues will haw, will be bot froath, &c.

The first woyag that ewer I went with the rest of owr COVENS wes [to] Plewghlandis; and thair we shot an man betuix the plewgh-filtis, and he presentlie fell to the ground, wpon his neife⁹ and his mowth; and than THE DIVELL gaw me an arrow, and cawfed me shoot an voman in that feildis; quhilk I did, and she fell down dead.¹⁰ In Winter 1660, quhen Mr Harie Forbes, Minister at Alderne, wes feik, we maid an bagg of the gallis, flesh, and guttis of toadis, pickles of bear,¹¹ pairings of the naillis of fingeris and toes, the liewer of ane hair, and bittis of clowtis. We steipit this all together, all night among watter, all laked¹² throw vther. And whan we did put it among the water, SATAN wes with ws, and learned ws the wordis following, to say thryfe ower. They ar thus,

‘HE is lying in his bed,—he is lyeing feik and fair;
Let him lye intill his bed two monethis and [thrie] dayes mair!
2^{di}, Let him lye intill his bed,—let him lye intill it feik and fore;
Let him lyne untill his bed monthis two [and] thrie dayes mor!
3^{di}, He fall lye intill his bed, he fall lye in it feik and fore;
He fall lye intill his bed [two monethis and] thrie dayes mor!’

Quhan we haid learned all thes wordis from THE DIVELL, as said is, we fell all down [wpon owr] kneis, with owr hear down ower owr showlderis and eyes, and owr handis lifted wp, and owr eyes

¹ Stroking; gently rubbing. ² The *boneshave* or *boneshaw*, signifies the *SCIATICA*. From an amusing, published specimen of THE EXMOOR DIALECT, Devonshire, it appears, that the term is also known in England. The peasantry of that district use a singular *Charm* for its cure. ‘The patient must lie upon his back, on the bank of the river or brook of water, with a straight staff by his side, between him and the water; and must have the following words repeated over him, viz.

“Boneshave right—Boneshave straight—
As the water runs by the stave—Good for Boneshave!”

They are not to be persuaded but that this ridiculous form of words seldom fails to give them a perfect cure.’ *Exmoor Scolding*. P. 8. Note. ³ Haunch. ⁴ Affrighted; terrified. ⁵ Nibs; extremities. ⁶ It appears very singular to us who live in the Nineteenth Century, that SATAN should have taught his servants to invoke THE SAINTS, and even THE HOLY TRINITY. The charms recited by his disciples are usually fragments of ancient Monkish rhymes; and most of them were such as many good Roman Catholics of the lower orders, even in these times, would not scruple to use, for the supposed cure of their bodily ailments. ⁷ One or more. ⁸ Whole. ⁹ Nose. ¹⁰ Issobell previously explained, that these poisoning excursions took place, when the Witches were careering in mid-air, mounted on windle-straws and bean-stalks, &c. The DEVIL usually made them pick up such of the Elf-arrows as fell short of or missed their mark. ¹¹ Grains of barley, or *bear*. ¹² Hacked; minced into small pieces.

[stedfastlie fixed wpon] THE DIVELL; and said the forfaidis wordis thryfe ower to THE DIVELL, striktlie, against Maister Harie Forbes [his recovering from the said feiknes.] In the night tym we cam in to Mr Harie Forbes chalmer, quhair he lay, with owr handis all fineared [. out] of the bagg to swing it wpon Mr Harie, quhair he wes feik in his bed; and in the day tyme [. ane of owr] nwmbur, quho wes most familiar and intimat with him, to wring or fwing the bagg [wpon the said Mr Harie, as we could] not prevaill in the night tym against him; quhilk wes accordinglie done. Any of [.] comes in to your howffes, or ar set to doo yow evill, they will look vncowth lyk, thrawn [.] hurlie lyk, and thair clothes standing owt. The Maiden of owr Coven, Jean Mairten, wes [. We] doe no great mater without owr Maiden.

And if a child be forspoken,¹ we tak the cradle [.] throw it thryfe,² and than a dowg³ throw it; and then shakis the belt abow the fyre [. and then cast it] downe on the ground, till a dowg or catt goe ower it, that the feiknes may com [. wpon the dowg or] catt.

ALL quhilkis wer swa spokin furth of the mouth of the said ISSOBELL GOWDIE, &c.⁴

[Indorfed] ED^R, 10 July, 1662. Considered and found relevant be THE JUSTICE DEPUTE.

'Tak cair of this peaper. See the Justice deputis judgement of it. Show this to the Commissioneris.'

HAVEING read and considered THE CONFESSIONS of ISOBEL GOWDIE, within contened, as particularie SATHAN, Renunciation of Baptism, with diverse malefices, I find that a Commission may be verie justlie pass, for hir last Tryall. (Sic subscribiter) A. COLUILLE, (Justice-depute.)

(3.) ISSOBELL GOWDIES THIRD CONFESSION.

AT AULDERNE, the fyftein day of May, 1662 yeiris, In prefence of Master HARIE FORBES, Minister of the Gospell at Alderne, Mr HEW ROSSE, Minister at Nairn; JOHNE INNES of Edingeith; HEW HAY of Newtoun; Mr ALEX DUNBAR, Schoolmaster and Session Clerk of Alderne; GEORGE PHINNEY, in Kirkmichaell; and Johne Weir, and Androw Easie in Alderne; and many vtheris, WITNESSIS to THE CONFESSION efter sett down, spoken furth of the mouth of ISSOBELL GOWDIE, spous to Johne Gilbert in Lochloy.

THE quhilk day, in prefence of me, JOHNE INNES, Notar Publict, and Witnессes all vnder subferywand, the said ISSOBELL GOWDIE, appeiring to be most penitent for hir abominable finnes of Witchcraft, most ingenwossie procedit in hir CONFESSION therof, in maner efter following; to witt. First, as I wes goeing betwixt the townis of *Drumdevin* and *the Headis*, THE DIVELL met with me, and thair I covenanted with him, and promiseit to meit him, in the night tym, in *the Kirk of Alderne*; quhilk I did. He stood in the Readeris dask, and an blak book in his hand; quhair I cam befor him, and renuncet JESUS CHRIST and my baptisme; and all betuixt the soale of my foot and the crown of my head, I gaw frielie wp and ower to THE DIVELL. *Margaret Brodie*, in Alderne, held me wp to THE DIVELL, wntill he re-baptised me, and marked me in the shoulder, and with his mouth sucked out my blood at that place, and spowted it in his hand, and sprinkling it wpon my head and face, he said, 'I baptise ye, JANET, to my selff, in my own nam!' Within a whyll thereafter we all removed. And within few dayes he cam to me, in *the New Wardis of Inshoch*, and ther haid carnall cowpulation with me. He wes a werie meikle blak roch man. He will lye als hewie wpon ws, quhan he hes carnall dealling with ws, lyk an malt-secke. His memberis ar exceiding great and long; no mans memberis ar so long and bigg as they ar. He wold be amongst ws lyk a weath horfe amongst mears. He wold lye with ws in prefence of all the multitud; neither haid we nor he any kynd of shame; but

¹ Bewitched. ² This seems to allude to passing the child, &c., through an enchanted hoop, ring, or belt, a very common popular charm in those days. ³ Dog. ⁴ The same form and subscriptions as in the preceding Confession, with the Notarial Attestation, &c. of JOHN INNES.

especiallie *he* hes no shame with him at all. He wold lye and hawe carnall dealling with all, at euerie tym, as he pleafed. He wold haw carnall dealling with ws in the shap of a deir or any vther shap that he wold be in. We wold never refuse him. He wold com to my hows-top in the shap of a crow, or lyk a deir, or in any vther shap, now and then. I wold ken his voice, at the first heiring of it, and wold goe furth to him and haw carnall cowpulation with him. The youngeft and lwtstest women will haw werie great pleafour in their carnall cowpulation with him, yea much mor than with their awin husbandis; and they will haw a exceiding great desir of it with him, als much as he can haw to them, and mor; and never think shame of it. He is abler for ws that way than any man can be (Alace! that I fould compair him to ane man!) onlie he ves heavie lyk a malt-seck; a ludg nature, verie cold, as yce.

He wold fend me now and then to *Aulderne* fom earandis to my neighbouris, in the shap of ane hair. I wes on morning, abowt the break of day, going to *Aulderne* in the shap of ane hair, and *Patrik Papleyis* ferwandis, in *Kilhill*, being goeing to ther labouring, his houndis being with them, ran efter me, being in the shap of ane haire. I ran werie long, bot wes forcet, being wearie, at last to take my own hous. The dore being left open, I ran in behind ane chift, and the houndis followed in; bot they went to the vther fyd of the chift; and I was forcet to run furth agane, and wan into ane vther hows, and thair took leafour to say,

‘HAIR, hair, God fend thé cair!
I am in a hearis liknes now,
Bot I fall be an voman ewin now!
Hair, hair, God fend thé cair!’

And so I returned to my owin shap, as I am at this instant, again. The dowgis will fom tymes get fom byttis¹ of vs, quhan ve ar in hairis,² bot will not get ws killed. Quhan ve turn owf of a hairis liknes to owr awin shap, we will haw the byttis, and rywis, and scrattis³ in owr bodies. Quhan we vold be in the shap of cattis, we did nothing but cry and wraw,⁴ and rywing, and as it ver, wirrieing on an vther; and quhan ve com to owr awin shap again, ve will find the scrattis and rywes on our skins, werie for. Quhan on of vs or mor ar in the shap of catis, and meitt with ony vtheris owr neighbouris, we will say,

‘DIVELL SPEID THÉ—GOE THOW WITH ME!’

And immediatlie they will turne in the shap of ane catt, and goe with ws. Quhen we wilbe in the shap of crowes, we will be larger than ordinar crowes, and will sitt wpon brenches of treis. We went in the shap of rewkis⁵ to *Mr Robert Donaldson* hows, *THE DIVELL*, and *Johne Taylor*, and his wyff, went in at the kitchen chimney, and went down wpon the crowk.⁶ It wes about *Lambes*,⁷ in anno 1659; they opened an vindow, and (we) went all in to the hows, and gott beiffe and drink thair; bot did no more harme.—We went in to *the Downie-hillis*; the hill opened, and we cam to ane fair and lairge braw rowme, in the day tym. Thair ar great bullis rowtting and skoylling ther, at the entrie, quhillk feared me.⁸

Bot that quhich troubles my conscience most, is the killing of severall perfones, with the arrows quhich I gott from *THE DIVELL*. The first woman that I killed wes at *the Plewgh-landis*; also I killed an⁹ in the East of *Murrey*, at *Candlmas*¹⁰ last. At that tyme *Bessie Wilson*, in *Alderne*, killed on thair; and *Margaret Wilson*, ther, killed an vther; I killed also *James Dick* in *Canniecaill*: Bot the death that I am most of all forrie for, is the killing of *William Bower*, in *the Milltowne of Moynes*; *Margaret Brodie* killed an voman, washing, at *the Burne of Tarres*; *Bessie Wilson* killed ane man at *the Bushe of Strutheris*; *Bessie Hay* in *Aulderne* killed ane prettie man called *Dunbar*, at the East

¹ Bites.

² In the shape of hares.

³ Tears and scratches.

⁴ *Caterwaul*, like cats.

⁵ Rooks.

⁶ The *crook*, on which the ‘kail-pot’ hangs, over the fire.

⁷ *Lambes*, the 1st day of August.

⁸ Alarmed,

frightened me. See her *CONFESSION*, Apr. 13, 1662, page 604.

⁹ Ane; one.

¹⁰ The purification of the

blessed Virgin Mary, Feb. 2d.

end of the *Towne of Forres*, as he wes coming owt at an gaitt; *Margaret Brodie* in Alderne killed on *David Blak*, in Darnvay. *Janet Breadhead*, spows to *Johne Taylor*, told me, a litle befor she wes apprehendit, that *Margaret Wilfone* in Alderne shot *Alexander Huchcon*, in Alderne; *Janet Breadheid* shot *Johne Falconer*, in the Park. The most of ws all wer ther, at that tyme. *Bessie Wilfone* killed on *William Man*, at Burgie; *Margaret Wilfone* killed on *Johne Lee*, and *Janet Breadheid* killed a fuy¹ at Burgie; *Bessie Wilfone* in Alderne, on an first Monday of the Reath, took a bagg maid of hairis lieweris,² the flesh, guttis and gallis of toadis, naillis of fingeris and toes, and fwinged it on an young man called *Thomas Reid*, and he died. *Bessie* and *Margaret Wilfones* in Alderne, *Johne Taylor* and his wyff, *Margrat Brodie* and I, and THE DIVELL, wer together, and *Mr Harie Forbes*, Minister at Alderne, goeing to *Moynes*. THE DIVELL gaw *Margret Brodie* an arrow to shoot at him, quhilk she did; bot it cam short; and the *Divell* cawfed tak it wp again. We desiret to shoot again, bot the *Divell* said, 'No; we wold not gett his lyff at that tyme!' The *Divell* cawfed me to shoot at the *Laird of Park*,³ as he wes croceing the *Burne of the Boath*; bot I missed him.

We wold goe to feuerall howflis, in the night tym. We wer at *Candlmas* last in *Graingehill*,⁴ quhair we got meat and drink anewgh. THE DIVELL sat at the heid of the table, and all the COVEN abowt. That night he desirit *Alexander Elder*, in Earlsat, to say the grace befor meat, quhilk he did; and is thus:

'WE eat this meat in THE DIVELLIS nam,
With sorrow, and fych,⁵ and meikle shame;
We fall destroy hows and hald;
Both sheip and noat in till the fald.
Litle good fall come to the fore
Of all the rest of the litle store!'

And than ve began to eatt. And quhan ve laid endit eattin, we looked steadfastlie to THE DIVELL, and bowing owrfelwes to him, we said to the *Divell*,

'We thank thé owr Lord for this!' &c.

The wordis which we spak, quhan we maid the pictur, for distroyeing of the *Laird of Parkis* meall-children, wer thus:

'IN THE DIVELLIS nam, we powr in this water among this mowld (meall,)⁷
For lang duyning and ill heall;
We putt it into the fyre,
That it may be brunt both flik and stowre.
It falbe brunt, with owr will,
As any flikle⁸ wpon a kill.'

THE DIVELL taught ws the wordis; and quhan ve had learned them, we all fell downe wpon owr bare kneis, and owr hair abowt owr eyes, and owr handis lifted wp, looking steadfast wpon THE DIVELL, still saying the wordis thryfe ower, till it wes maid. And then, in THE DIVELLIS nam, we did put it in, in the midst of the fyre. Efter it had skrukned⁹ a litle befor the fyre, and quhan it wes read lyk a coale, we took it owt in THE DIVELLIS nam. Till it be broken, it will be the deathe of all the meall children that the *Laird of Park* will ewer get. Cast it ower an Kirk, it will not brak quhill¹⁰ it be broken with an aix, or fom fuch lyk thing, be a man's handis. If it be not broken, it will last an hundreth yeir. It hes ane cradle about it of clay, to preferue it from skaith;¹¹ and it wes rosten each vther day, at the fyr; fom tymes on pairt of it, fom tymes an vther pairt of it; it vold be a litle wat with water, and then rosten. The bairn vold be brunt and rosten, ewin as it ves by ws. It wanted

¹ Sow. ² Hares' livers. ³ John Hay of Park. ⁴ Belonged to Brodie of Lethin. ⁵ Sighing; lamentation. ⁶ The rest was probably omitted in writing down the Confession, as being blasphemous. ⁷ It is writtin *meall* in the other Confession; and the metre (such as it is) requires this liberty. *Mowld* signifies 'earth' or 'dust.' ⁸ Stubble. ⁹ Parched; shrivelled. ¹⁰ Until. ¹¹ Harm; injury.

no mark of all the pairtis of an child, little lippis, &c., and the handis of it folded downe by its fydis. *Johne Taylor* and *Janet Breadheid* his wyff, *Bessie* and *Margret Wilfones* in *Aulderne*, and I my felfe, with THE DIVELL, wer onlie at the making of it; bot all the multitud of all ovr COEVENS got notice of it, at the nixt meitting; for all ovr actis and deidis, betuixt grett Meittingis, most be geven accompt of, and notted¹ in his book at each Grand Meitting—bot all my owin COVEN gott notice of it werie schortlie. THE DIVELL him felf cam to me, to my awin hows, and bad me meitt him in *Johne Tayloris* hows, to help thaim to mak the said pictur. All THE COVEN did flie lyk cattis, keas, hairis, and rewkis, &c. bot *Barbara Ronald*, in *Brightmanney*, and I, still² read on an horfe, quhich ve vold mak of a straw or becin-stalk.³ *Bessie Wilfone* wes still in the liknes of a rewk.

Quhan we ar at meat, or in any vther place quhateuir, the *Maiden* of each COVEN fittis abow the rest, nixt THE DIVELL; and she ferwis THE DEVILL, for all the old peopill that he cairis not for, and ar veak and wnmeit for him. He will be with hir and ws all lyk a weath-horfe efter mearis; and somtymes a man, bot werie wilfull⁴ in carnall cowpulation at all tymis; and they ewin so als wilfull and desifrows of him. Som tymis, among ovr felwis, we wold be calling him ‘BLAK JOHNE,’ or the lyk, and he wold ken it, and heir ws weill aneughe; and he ewin then com to ws, and say, ‘I ken weill anewgh what 3e wer sayeing of me!’ And then he vold beat and buffet ws werie for. We wold be beattin if ve wer absent any tyme, or neglect any thing that wold be appointit to be done. *Alexr Elder*, in *Earlseat*, vold be werie oft beattin. He is bot soft,⁵ and cowlde never defend him felf in the leift, bot greitt and cry, quhan he vold be scourging him. Bot *Margret Wilfson*, in *Aulderne*, wold defend hir self fynlie, and cast wp hir handis to keip⁶ the stroakis off from hir; and *Bessie Wilfone* wuld speak cruftie with hir townge, and wold be belling again to him stowtly. He wold be beating and feurgeing ws all wp and downe with cardis⁷ and vther sharp feurges, like naked gwraftis; and we wold be still cryeing, ‘Pittie! pittie! Mercie! mercie, ovr Lord!’ Bot he wold haw neither pittie nor mercie. Whan he vold be angrie at ws, he wold girne at ws lyk a dowge, as iff he wold fwallow ws wp. Somtym he vold be lyk a stirk, a bull, a deir, a rae, or a dowg, &c., and haw dealling with ws; and he vold hold wp his tail wntill we wold kisse his arce. And at each tyme, quhan ve wold meitt with him, we behoowit to ryfe and mak our curtesie; and we wold say, ‘3e ar welcom ovr Lord!’—and ‘How doe 3e, my Lord!’ &c. Quhan we wold tak the furit⁸ (fruit?) away of anie perfonen midden or dunghill, we wold say thus, (when we wold putt haked flesh of an vnchristned child, dowgis and sheipis flesh, and pairings of naillis, &c., all haked throw-vther):—

‘ We putt this intill this ham,⁹
In our Lord THE DIVELLIS nam.
The first handis that handles thé,
Brunt and scalded fall they be!
We fall distroy hows and hald,
With the sheip and nout¹⁰ intil the fald,
And litle fal come to the fore
Of all the rest of the litle-store!’¹¹

We killed an ox, in *Burgie*, about the dawning of the day, and we browght the ox with ws hom to *Aulderne*, and did eat all amongst ws, in an hows of *Aulderne*, and feasted on it.

THE DEVILL wold giw ws the brawest lyk money that ewer wes coyned; within fowr and twantie houris it vold be horfe-muke.¹² Alace! I deferw not to be sitting heir, for I haw done so manie evill

¹ Noted; recorded.

² Constantly; always; uniformly.

³ Bean-stalk.

⁴ Wanton.

⁵ Uncourageous; simple; unresisting.

used in carding wool, flax, &c.

⁶ *Kip*; ward off.

⁷ Scourges made of cords—not ‘cairds,’ or instruments

spirit, ‘fushion,’ (Fr. *foison*); that is, the fertilizing power.

⁸ The Editor never before met with this word; it evidently means strength.

⁹ Flame; home; destination.

¹⁰ Nolt;

cattle.

¹¹ The last four lines are the same with the conclusion of the WITCH-GRACE, in this Confession, p. 612.

¹² Horse-dung. In other Witch cases, money thus procured is usually said to have been turned into ‘sclaitt-stanis.’

deidis, especiallie killing of men, &c. I deferw to be reivin wpon iron harrowes, and worfe, if it culd be devyfit !

And quhan we tak away the fruit of cornis, at *Lambes*,¹ we tak an wooll-sheir, and cuttis or clips onlie thrie stakis² of it, and plaitis vther thrie rudis together, and faves,

‘ WE cutt this corne in our Lord THE DIVELLIS nam,
And we fall haw the fruit of it ham !’

And this thryfe ower ; and so we haw the fruit of that field. Ewin so, quhan we tak keall or the lyk, &c. And we lay all vp till *Yewll*, *Pace*, or Halie dayes ; and pairtis it among vs, and feaftis on that together.

Wpon the quhillis all and fundrie of the premiffes, fwa spokin and willinglie Confest be the said *Issobell Gowdie*, I, the said *Johnne Innes*, Notar publict, haw wretten thir presentis, and with the Witneffes abow and vnder namet, haw subfcriuit the samen with our handis, day, moneth, place, and yeir abow fett doun.

JOANNES INNES, Notarius Publicus.³

MR HARY FORBES, Minister of Auld Earn, Attestis.

HEN. ROSE, Minister at Nairne, Attestis the fairsaid Declaratioun, as to the principal substantialis.

HEW HAY of Newtown, Attestes.

JO. WEIR, in Auldearne, Attestis.

GEORGE PHINNIE, in Kirkmichael, Attestis.

(4.) ISSOBELL GOWDIE’S FOURTH CONFESSION.

AT AULDERNE, the tuantie fevinth day of May, 1662 yeiris. In prefence of MASTER HARRIE FORBES, Minister at Aulderne ; PATRIK CAMPBELL of Boath ; MR ALLEX^R DUMBAR, School-master and Clerk of the Session of Aulderne ; GEORGE PHINNEY, in Kirkmichael ; HEW HAY of Newtowne ; and JOHNNE WEIR, in Aulderne ; WITNESSES to THE CONFESSION of ISSOBELL GOWDIE, spows to Johnne Gilbert, in Lochloy.

THE said day, the said ISSOBELL, professing repentance for hir former finnes of Witchcraft, and that she had bein ower long in THE DIVELLIS service ; without ony compulsitouris, proceedit in hir CONFESSION, in maner efter following : That is to say. I acknowledg, to my great grieff and tham, that fyftein yeiris since I denyed FATHER, SON, and HOLIE GOST, in the *Kirk of Aulderne* ; and gaw over my bodie and fowll to THE DIVELL ; he standing in the Readeris Dask of *Aulderne*, and an blak book in his hand : *Margret Brodie*, in Aulderne, held me wp to THE DIVELL, quhill⁴ I did this, and quhill he marked me one the shoulder, and fowked out my blood thairat, and spitted it in his hand, and sprinkled it on my head, and baptifed me ‘ JANET,’ in his owin nam. Efter that, he had carnall cowpulation with me, in the *New Wardis of Inshoch* ; and still thairefter, fra tym to tym, at owr pleafour.

The names of THE COEVEN ar thes.⁵ *Bessie Wilfone*, in Aulderne ; *Janet Burnet*, ther ; *Elspet Nisbie*, ther ; *Margret Brodie*, ther ; *Margret Vilfone*, ther ; *Bessie Hay*, ther ; *Johnne Taylor*, in Belmakeith ; *Janet Breadhead*, his spous ; *Barbara Ronald*, *Issobell Nicoll*, in Lochloy ; my self, with *Jean Mairten*, our MAIDEN ; and *Johnne Young*, in Mebestoun, owt OFFICER. THE NAMES OF OWR DIVELLIS, that waited upon us, ar thes. First, ROBERT, the *Jakis* ; SANDERIS, the *Read Reaver* ; THOMAS, the *Fearie* ; SWEIN, the *roaring Lion* ; THIEFFE OF HELL, *Wait upon hir self* ; MAKHECTOUR ; ROBERT, the *Rule* ; HENDRIE LAING ; and RORIE. We wold ken them all, on by

¹ *Lammas*, 1st August ; *Festum S. Petri ad Vincula*. motto, before referred to, are annexed.

⁴ Until.

² Stalks ; stems.

³ The long Latin *docquet* and
⁵ The principal purpose of this renewed Examination seems to have been to get a more detailed account of the persons composing her COEVEN, &c., besides getting a solemn Confirmation of her former Declarations ; so that the rest of that unhappy Society might in due time be brought to Trial and punishment.

on, from vtheris. Som of thaim apeirit in fadd-dun, fom in graffe-grein, fom in sea-grein, and fom in yallow. THE NIK-NAMES that THE DIVELL gaw wnto ws wer, PIKELL NEIREST THE VIND, this wes *Margret Wilfones* niknam; *Bessie Wilfones* niknam ves THROW THE CORN-YAIRD; *Elspet Nishies* niknam ves BESSIE BALD; *Jean Mairtenis* niknam, quho ves MAIDEN, is OWER THE DYK WITH IT; *Bessie Hayes* nickname is ABLE AND STOUT.

I haw fein the Elf-arrowes maid. The *Divell* dights¹ them, and the *Elf-boyes* quhytes² them. We got ewerie on (of) ws so many of thaim from the *Divell*, to shoot at men.³ I my self killed on *William Bower*, at Miltoun of Moynes. This griewis me mor than any thing that I ewer did. *Margret Brody* killed an woman, washing, at the *Burn of Tarras*. *Bessie Wilfons* killed an man, at the *Bush of Strutheris*. *Bessie Hay* killed on *Dunbar*, at the East end of the town of *Forres*, coming owt at a gait. *Margret Brodie* shot at on *David Blak*. *Margret Wilfons* killed on *Alexr Hucheson*, in Aulderne. *Janet Breadhead*, now in prifon, killed *Johne Falconer*, in Park. Ther were thrie killed East the cowntrie, at *Candmas* last: I killed on, *Margret Brodie* on, and *Bessie Wilfons* on. I shot on *James Dik*, in Connicavell; *Margret Brodie* killed on *W^m Cruikshank*; *Margret Vilfons* killed on *Johne Ley*; *Janet Breadhead* killed a fuy⁴, also she killed an vther man at *Burgie*; and *Bessie Wilfons* killed on thair, namet *W^m Man*. We killed an ox, and brought it to *Bessie Hayes* hows, in Aulderne; and we did eat him thair. I shot at the *Laird of Park*, as he ves crossing the Burn⁵ of Boath; bot, thankis to God now, that he preferwit him. *Bessie Hay* gaw me a great cuffe,⁶ becaus I missed him.

Margaret Brodie shot at *Mr Harie Forbes*, at the Standing-stanes, bot she missed; and speirit, ‘If she fould shoot again?’ And the *DIVELL* said ‘Not!—For we wold nocht get his lyf at that tym.’ We intentit⁷ feuerall tymes for him, quhan he ves feik. *Bessie Hay*, *Jean Mairten*, the Maiden, *Bessie Wilfons*, *Margret Brodie*, *Elspet Nishie*, spows to *Johne Mathow*, and I myself met in *Bessie Wilfones* hows, and maid an bag against him. The bag wes maid of the fleth, guttis, and gallis of toadis, the liewer of a hear,⁸ pikles of corn, and pairings of naillis of fingeris and toes; we steipit all night among water. The *Devell* learned ws to fay thes wordis following, at the making of the bag:—

‘He is lying in his bed—and he is feik and fair,

Let him ly in till that bedd monthes two and dayes thrie mair!

He sal ly in till his bed, he salbe feik and fair—

He fall lye in till his bedd monethes two and dayes thrie mair!’

And quhan we haid said thes wordis, we wer all on our kneis, our hair abowt owr showlderis and eyes, holding wp our handis to THE *DIVELL*, that it⁹ might destroy the said *Mr Harie*. It ves intentit that ve, coming in to his chalmer, in the night tym, we fould swing it on him. And becaus we prevailed not at that tym, *Bessie Hay* vndertook and cam in to his chalmer to wisit him, being verie intimat with him; and she brought in of the bag in hir handis, full of the oyll thairof, to haw fswowng and casten dropis of it on him; bot ther wer fom vther worthie persons with him at that tym, by qulich God prevented *Bessie Hay*, that she got no harm don to him, bot fswang a litl of it on the clothes of the bed quhair he lay.

Johne Taylor and his wyff, *Bessie* and *Margret Wilfones*, and I, maid a pictur for the *Laird of Parkis* maill children.¹⁰ *Johne Taylor* brought hom the clay in his plaid newk; his wyff sifted it; we powred in vater in a cowg¹¹ amongst it, and wrought it for,¹² and maid a pictor of it, lyk a child, als big as a pow. It vanted no mark of the imag of a bairn, eyes, nose, mouth, litle lippies, and the hands of it folded down by its fydis. The vordis that we said, quhan we maid it, ver thes:—

¹ Dresses.

² Blocks them out.

³ See the CONFESSION of Apr. 13, 1662, where *Issobell* tells us they were licensed to sport, in this manner, when riding on straws through the air; and that they had power to kill all who did not sanctify themselves, &c.

⁴ A sow.

⁵ On good authority, *Issobell* and her master ought to have known, that the Laird was out of their power while crossing a running stream.

⁶ A smart slap, or blow.

⁷ Tried; essayed.

⁸ A hare's liver.

⁹ Viz. Their charmed bag.

¹⁰ See the former CONFESSIONS.

¹¹ A sort of wooden dish.

¹² Sore; extremely.

‘ We put this water among this meall,
 For long dwynyn¹ and ill heall;
 We put it in intill the fyr,
 To burn them vp both stik and flour,
 That be brunt with our will,
 As any stikill² on an kill !’

THE DIVELL sitton on an blak kift. Ve wer al on our kneis, and owr hair about our eyes, looking on THE DIVELL stedfastlie, and owr handis lifted vp to him, saying the vordes ower. And by this the bairnis died, &c. All this, with a great many mor terrible thingis, the saidis Witneffes and Notar hard the said *Iffobell* CONFES, and most willinglie and penetently speak furth of hir ovin mouth. In witnes quhairof, We haw subferyuit thir presenttis, with owr handis, day, yeir, and place, abow sett down.

ITA EST Joannes Innes, Notarius Publicus, in fidem premifforum, rogatus et requisitus, subscribo.

JOANNES INNES, Not^{rius} Publicus.

MR HARY FORBES, Minister of the Gospel, at Old Earn, Attestis.

W. SUTHERLAND of Kinsterrie, Attestis.

HEW HAY of Newtounne, Attestis.

ALL. DUNBAR, Schoolmaster and Clerk to the Session of Oldearne, Attestis.

GEORGE PHINNIE, in Kirkmichel, Attestis.

JO. WEIR, in Auldearne, Attestis.

VIII. CONFESSION of *Janet Breadheid, spouse of John Taylor, in Belmakeith.*

AT INSHOCH, the fowrteinth day of Aprill, 1662 yeiris. IN prefrence of PATRIK DUNBAR of Benafferrie,³ Shereff principall of the Shereffdome of Elgin and Forres; HEW HAY of Newtounne; ARCHBALD DUNBAR, in Meikle Penick; ARCHBALD DUNBAR, in Lochloy; WALTER CHALMER, in Balnafferrie; JAMES COWPER, in Inshoche; JOHNE WEIR, in Aulderne; and ane great multitud of all fortis of vther perfones; WITNESSES to THE CONFESSIONS and DECLARATIOUN efter sett downe, spokin furth of the mowthe of JANET BREADHEID, spous to Johne Taylor, in Belmakeith.

THE quhillk day, in prefrence of me, JOHNNE INNES, Notar Publict, and Witneffes abownamet, vnderfubferyuand, ⁴[the said] JANET BREADHEID, professing repentance for hir former finnes of Witchcraft, and that she haid bein over long in the [samin] service; without any preffuris,⁵ proceidit as followis, to witt. FIRST, I knew nothing of Witchcraft wntill I wes mari[et with] my husband, Johne Taylor; andsit wes he, and Elspet Nishie, his mother, that entyfed me to that craft. And the first [thing] that we did wes, we maid some drowgries,⁶ of dowgs flesh and sheipis flesh, against Johne Hay, in the Mure; and therby took away his cornes, and killed his horse, noat,⁷ theip, and vther guidis;⁸ and layed it abowt his hows, to tak away his awin lyffe; and thereafter, he thortlie died. Onlie my mother-in-law and my husband did this, to learne me; and this wes my first [lesson] from them, &c.⁹ When they gott me to consent to this craft; first, they haid me to the Kirk of Nairne, in the nycht [tyme;] and THE DIVELL wes in the Readeris dask, and an book in his hand. And at that meitting, Bessie Wilsone, in Auld[erne;] Margret Wilsone, spows to Donald Callam, thair; Margret Brodie, thair; Barbara Friece, ther; Helen Inglis, spows to William [. . . .] thair; Janet Burnet, thair; Elspet Makbeith, thair; Elspet Nishie, spows to Johne Mathew, in Aulderne; Mariore Taylor, [spous] to Robert Barrie, ther; Bessie Hay, ther; Archibald Man, ther; Mariorie

¹ Pining; lingering sickness; gradual wasting away.

² Stubble.

³ The Dunbars of Balnafferrie and Westfield were *heritable* SHERIFFS of Murray.

⁴ A considerable part of this paper having been destroyed by mice, the Editor has supplied the blanks from conjecture, after a careful comparison with other similar Examinations. The words so supplied are put within brackets.

⁵ Without the application of TORTURE, or other ‘legal compulsi-

⁶ Drugs; enchanted charms.

⁷ Nolt, cattle.

⁸ Farm stock; ‘bestial.’

⁹ A

pretty experiment, indeed, for enticing a novice to be initiated !

Man, his daughter, ther; Elspet Makhomie, relict [of] wmq¹¹ Allexander Huchefon, ther; Bessie Friece, spous to Johne Gilbert, ther; Iffobell Friece, spows to Androw Miller, ther; Agnes Torrie, spows to William Yowng, ther; Elspet Chifolme, spows to vmq¹¹ Makhomie, ther; Allexander Elder, in Earlsfeut; Janet Finlay, his spows; Elspet Laird, in Miltoun of Moynes; Johne Robertfon, in Leathin; Grifall Sinklar, his spows; Allexander Sheipheard, in Miltoun of Moynes; Janet Man, his spows; Mariorie Dunbar, in Brightmanney; Kyllie, in Vester Kinfray; Allexander Ledy, ther; Elspet Gilbert, in Leathinbar; Agnes Brodie, in Leathin; Janet Smith, spows to Robert Frafer, in Arry; Bessy Peterkin, in Torrich; Allexander Bell, in Drumdewin, a charmer; Iffobel Nicoll, in Lochloy; Bessie Young, ther; Elspet Falconer, spows to James Inglis, in Penick; Bessie and Margret Huchcons, ther; Walter Ledy, ther; wer all ther that night. Johne Taylor, my husband, wes then Officer; bot Johne Yowng, in Mebestounne, is now Officer to my COE[VEN.] Quhan I cam first ther, THE DIVELL called tham all be thair names, on the book; and my husband, than [OFFICER,]¹ called thame at the dore. And when that was done, Bessie Wilfon, in Alderne, fat down nixt THE DIVELL;² [Bessie] Hay, thair, fat nixt him, on the vther sid; Janet Burnet fat nixt hir; and Elspet Nishie, spows to the said Johne [Mathew,] fat nixt Bessie Wilfon, hir mother. She wes THE MAIDEN to hir motheris Coeven. All the rest fat downe [as] they to cam.³

The nixt thing, efter quhat wes done that night, THE DIVELL lay with them all abowt. And then for me, my husband presented me, and he and Margrat Wilfon, in Alderne, held me vp to THE [DIVELL to] be baptised: And efter I haid put my on hand to the foallis of my foot, and the vthir hand to the [crown of] my head, and renunced my baptisme, and all betuixt my two handis to the Divell, the Divell [marked me] in the shoulder, and fuked out my blood with his mowth, at that place; he spowted it in his hand, and [sprinkled it] on my head. He baptised me thairvith, in his awin nam, 'CHRISTIAN.' And than immediatlie thairefter, [they all returned] each to ther awin howffis. Within fyw dayes thairefter, he cam to me to my hows, quhan my hub[and] was furth, in the morning, at the plewgh, to sie the mark quhich he gaw me; and he did lye with me in the naked [bed,] and haid carnall cowpulation with me; and gaw me ane piece of money, lyk a testain. He was a meikle, roch, blak man, cloven footed, werie cold; and I fand his nature within me als cold as spring-well-water. He promiseit to sie me again, within eight dayes, quhilk he did, and haid carnall cowpulation with me again, and gaw me an vthir piece of money, lyk the first; bot they both turned read,⁴ and I got nothing for thaim. He cam again within twantie dayes, and still⁵ once in the twantie dayes, and lay with me at each tym continually.

[We] met in the place of Darnvay⁶ nixt that, and thair we did eat and drink, &c. Efter that, we vould still meit [euerie] ten, twelve, or twantie dayes continwally.

Whan we haid Great Meittingis, Walter Ledy, in Penick, my [huf]band, and Allexander Elder, nixt to THE DIVELL, wer Ruleris; and quhan ther wold be but fewar, I my self, the deceassit Jean Suthirland, Bessie Hay, Bessie Wilfone, and Janet Burnet wold rule thaim. The first thing that we did, except the taking of meat, wes taking of the cornis of Drumdewan, and [then] pairted that amongft ws. 2dly, We fhoat noat⁷ in plewghes. 3dly, Agnes Grant, who wes brunt on the hill of,⁸ gott hyre from Elspet Monro, to destroy the Lairdis of Park and Lochloy, and thair [posteritie.] And then I and my husband, Elspet Nishie, and Bessie and Margret Wilfones, in Alderne, con[veened] our felwes with THE DIVELL, in Elspet Nishies hows; and then touk dowgis flesh, and theipis flesh, and [haked] it werie small with an aix, and feithed it an hail fornoon in a pot, among water: And than I took it owt; and THE DIVELL, with his awin hand, did put it in a theipis

¹ See *Issobell Gowdie's CONFESSIONS*; where it is stated that this worthy was OFFICER to a Coven. being MAIDEN to the Coven.

³ As they happened to come in; promiscuously.

⁴ Red.

⁵ Uniformly;

constantly.

⁶ The seat of THE EARLS OF MORAY. See *Issobell Gowdie's CONFESSIONS*.

⁷ Shot nolt, or

cattle, in ploughs, with elf-arrows.

⁸ Left blank, in the original.

bagg, and he steiring it still¹ abowt with his handis. We wer wpon our kneyes, owr hair about owr eyes, and owr handis lifted up, and ve looking stedfastlie wpon THE DIVELL, praying to him, repeating the vordis quhich he learned vs, that it sould kill and destroy the Lairdis of Park and Lochloy, and thair meall-children and posteritie. And then we cam to Inshoch, in the night tym, and skatered it wpon, and down, abow, and about the gait, and vther places quhair the Lairdis and thair sones wold most haunt; and then ve, in the lyknes of crows and rewkis flood abow the gait, and in the treis oposit to the gait. It wes apointed so, that if any of them sould twitch² or tramp wpon any of it, als veill as it or any of it to fall on thaim, it sould strik thaim with byllis,³ &c. and kill them: Quhillk it did; and they thortlie died. We did it to mak that hows airles.⁴ It wold wrong non els bot they. And it wes Keathren Sowter, that wes brunt,⁵ that [shot] William Hay, the last Laird of Parkis brother, for⁶ on Gilbert Kinley. It wes only that bagg that wes the death of both the last Lairdis of Park.

Alfo, four yeir since, I and my husband, Iffobell Gowdie, spows to Johnne Gilbert, in Lochloy, and Bessie and Margret Wilsones, in Alderne, maid [a pictur] of clay, lyk the Laird of Parkis eldest sone. My husband brought hom the clay in his plaid [newk. It] wes maid in my hows; and THE DIVELL him self with ws. We brak the clay werie small, lyk meil, [and] sifted it with a siew, and powred in vater amongst it, with wordis that THE DIVELL learned vs, [in the DI]VELLIS nam. I brought hom the water, in a pig,⁷ out of the Rud-wall.⁸ We wer all wpon owr [kneyes,] and our hair about owr eyes, and owr handis lifted vp to THE DIVELL, and owr eyes stedfast looking [vpon him,] praying, and saying wordis which he learned ws, thryfe ower, for destroyeing of this⁹ Lairdis [meall] children, and to mak his hows airles. It wes werie sore wrowght, lyk rye-bowt. It was about the bignes of a feadge or pow. It was just maid lyk the bairne; it vanted no mark of any maill child, such as heid, face, eyes, nose, mowth, lippes, &c., and the handis of it folded downe by its sydis. It wes putt to the fyre, first till it scrunked,¹⁰ and than a cleir fyre about it, till it wes hard. And then we took it owt of the fyre, in THE DIVELLIS nam; and we laid a clowt abowt it, and did lay [it] vp on a knag, and sometimes vnder a chift. Each day we vold water it, and then rost and bek¹¹ it; and turn it at the fyre each other day, whill¹² that bairne died; and then layed it vp, and steired¹³ it not wntill the nixt bairne wes borne: And then, within half an yeir efter that bairn wes borne, [we] took it owt again out of the cradle and clowt, and vold dip it now and than among water, and beck [it] and rost it at the fyre, each other day once, as ve did against the vther that wes dead, wntill that bairn [died] alfo. ALL quhillkis of the premisses, swa spokin and willinglie Confessit and declarit furth of the mouth of the said JANET BRED[HEID,] in all and be all thingis as is abow sett downe, I, the said JOHNE INNES, Notar Publict, haw writtine thir presentis, and with THE WITNESSES abownamet, in farder testimonie and witnessing of the premisses to be of veritie, We haw subscriuit the famen with our handis, [day, month,] yeir, and place abow specifeit.

JOANNES INNES, *Notarius Publicus*.¹⁴

HEW ROSE, Minister at Nairne, Attestis thir premisses, confessed in my presence, Aprile 15, 1662.

MR HARY FORBES, Minister of the Gospel at Old Earn, Attestis.

ARCHIBALD DUNBAR, witnes, Attestis. W. SUTHERLAND off Kinsterie, Attestis the premisses.

[JOHNE WE]IR, in Alderne, Attestis; Confessed in my presence, Apryll 15, 1662.

J. COUPER, Attestes. W. CHALMER, witnes to the premisses, confest in my presentis, 15 of Apryll.

IHEW HAY Attestes the premisses, Confest 15 Appryll, 1662.¹⁵

¹ Ever; constantly. ² Touch. ³ Boils. ⁴ Heirless. ⁵ For Witchcraft. ⁶ At the instigation of. ⁷ Earthen jug, or jar. ⁸ The Rood, or Holy-Cross, well. ⁹ The present Laird's male children. The last two Lairds are stated to have been destroyed by the charmed bag. ¹⁰ Got parched, or shrivelled; *shrunk*. ¹¹ Bake. ¹² Every alternate day, until that child died. ¹³ Stirred. ¹⁴ The long Latin docquet is annexed. ¹⁵ Some farther marking had at one time been on the margin; but only a few of the *letters* at the end of each line now remain. It appears to have been the Judgment of the Justice-depute, from a fragment of a Memorandum on the back of the CONFESSION; so that it is probable she had been tried at one of the 'JUSTICE-AIRS'—and of course would, on her own Confession, be condemned to be burnt.

No. VIII.

CONTINUATION OF No. XVIII. OF THE GENERAL APPENDIX OF
DOCUMENTS ILLUSTRATIVE OF GOWRIE'S CONSPIRACY.

(See VOL. II. pp. 299 to 313.)

WHEN the Editor was in the progress of completing his collection of materials for illustrating the truth of the EARL OF GOWRIE'S CONSPIRACY against KING JAMES VI, one of the Volumes of *Sir James Balfour's* MSS. had been misplaced. Since that time, however, the Editor has had the advantage of again inspecting that truly valuable repertory of historical information, and now submits a few more of those highly interesting Papers, which, he is happy to notice, place the conduct of the celebrated *Mr Robert Bruce* in a much more favourable point of view. In justice to the memory of that eminent individual, it has been thought proper to insert them in this Appendix. Throughout the protracted controversy between *Bruce* and THE KING, the latter, obviously, had the worst of the argument—and tyrannically put down his able but dauntless and pertinacious antagonist by a most unlawful stretch of arbitrary power, after he failed in all his attempts at foiling him with his own weapons.

The relentless persecution of *Bruce* must, assuredly, be accounted an additional blemish in the character of KING JAMES VI, by every unprejudiced person. The reader is once more referred to the text, and to the documents and authorities formerly quoted, in reference to this subject.

(18.) LETTER, *Mr Robert Bruce* to THE KING.¹

PLEAS 5OUR MAIESTIE,

WPON the directione send to me by 5our hienes CONSELL, I thought it meitt be my awin letter to testife my resolusione to 5our M. in that mater of GOWRIE. 5our M. can not be ignorant in quhatt termes I passit my resolutioun at *Sanct Jonnestowne*.² That resolutioun is as 5itt extant, subferywitt be monie honest vitneffis. To that resolutioun, both in mater and maner, I adhear; and fra it I am nott myndit to pas, be GOD his grace. This resolutioun gaue 5our M. perfytt contentment than, and I doubt nott bott itt vill do the lyke 5itt. So luiking that 5our MAIESTEIS scruple falbe fullie satified, in that mater, I rest,

5our M. his most humble and obedient subiect,

ROBERT BRUCE.

TO HIS MAIESTIE.

(19.) LETTER, *Mr Robert Bruce* to THE PRIVY COUNCIL.³

PLEAS 5OUR HONORIS,

I RECEAWED 5our Letteris on Setterday the 13 off this instant; and for fatisfactionne thairoff I haue directed my Letter, containing my avin⁴ resolutioun in that mater, unto his M. My resolutioun nov is relatiue to my resolutioun att *Sanct Jonstoun*, quhilk vas dyttit⁵ by his MAIESTEIS selff, and subferywet by monie honest vitneffis (befyd me) quha ar 5itt liewing. This resolutiounn gawe his M.

¹ From Orig. preserved among the *Denmylne MSS.* Adv. Lib. A. 2. 52. No. 25. It is undated. ² Perth, having been dedicated to St John as Patron Saint, was long known by this name. ³ From the same Coll. No. 26; also undated. ⁴ Own. ⁵ *Endited*, composed.

perfytt contentment then, and I doubt nott bot itt will do the lyk ȝitt; for vnto thatt resolutioun I adhear both in matter and maner; and I am reddie to testife the same, so oft as his M. pleases, by my awin hand wreitt. Sa, luiking that ȝour honoris fall not be forder trublit in that mater, I rest,

ȝour honoris to be commandit to his povar, in God,

To his M. most honorable PRIUIE CONSELL.

ROBERT BRUCE.

(20.) LETTER, *Mr Robert Bruce to the KING.*

MAY IT PLEIS ȝOUR M.

HEIRING that my cuming to *Aberdene* was interpret to spring of contempt, I thoct it my bundin dewtie to purg my felfe to þe vtermoſt thairof, for I compt contempt of GOD and his Lewtennent þe heigheſt cryme that is; And thairfoir, for purgation, I ſay, that quhatſoeuer is done with ane warrand of GOD and man can nocht incur þe ſuſpition of a contempt, lat be ane actual; and in deid, gif thair had bene ane preſcription or limitation of tyme in any Licience, I had failȝeit in paſſing þe boundis thairof; ȝea nocht onlie that, but I avaittit upon þe proper tyme quharfoir my Licience wes gevin me, and tuik þe benifeit quhen þe neceſſitie of my infirmitie conſtranit me; and being moir reſpectiue than that, I tuik it nocht quhill THE BISHOP OF MURRAY brocht me þe adwyſe of þe BISHOPPS OF SANCT ANDROS and GLASGOW to do ſo: And giff I had reſaut þe meineſt ſignification that culd be, that þe imbracing of þe benifit at that tyme wald nocht ſtand with ȝOUR HIENESS contentment, I wald moſt glaidlie haiff abſtanit thairfra; for I haif layed my compt, be GODIS grace, never to involue me in that giltines. So, to end, thair is no thing done be me quhairfoir my former benifeit ſuld be re-trenchit; and moſt humilie I creave that ȝour M. cenſure go nocht befor my procuring, but that my reparing to *Aberdene* for my better helth and confort of my wyff and childrin may ſtand with ȝour M. fauor. So reſting ever,

ȝour M. moſt humbill ſubiect and orator,

INDERNES,¹ ye 20 viij of Merche (1606?)

ROBERT BRUCE.

To THE KINGIS moſt excellent MAIESTIE.

(21.) SUPPLICATION, *Mr Robert Bruce to the PRIVY COUNCIL.*²

MY LORDIS OF SECREIT COUNSALL, vnto your lordſchipis humblie menis and ſchawis I, your ſeruitour, MR ROBERT BRUCE, Miniſter, That quhair, the laſt day when I wes brocht befor your ll, I wes commandit and ordaneit be ȝour ll. to addreſſe my ſelff to the burgh of *Invernes*, and thair to remane and within four myllis abute the ſame, dureing his MAIESTEIS will and pleaſour; lykeas, the tyme for my addreſſe thair daylie approtechis; quhairvnto, althocht I acknowledge my ſelff bundin in conſcience befor GOD and in my alledgeance to THE KINGIS MAIESTIE, my Souerane,* to gif all dew obedience, as by GODIS grace I mynd neur to be diſobedyent to his MAIESTIE or your ll., in ony of your ll. directionis, in this kynd; yitt, the indiſpoſitioun and inhabilitie of my perſone, conioyned with my grite aige, forceis me humblie to ſchew vnto your ll. how vnable I am to vndertak and to vnderly fuche a jorney and charge; ffor I am become ſo feible and waik,³ and my aigeit and weyryed⁴ perſone is ſo far worne and waſted with greif, cair, and vtheris viſitationis quhairwith it hes pleaſit THE LORD in his mercye to chaſtice me, that hardlie dow⁵ I travell any quhair, without haifard of my lyff: And yf it fall pleas GOD to viſite me with ſeiknes, outhat at *Invernes* or be the way, it is not liklie that I fall overcome⁶ the ſame. And tuotching the imputatioun layed vpoun me, whilk wes the caus of his MA^{TEIS} offence,⁷ and of this hard courſe tane with me, I thank GOD I wes frie and innocent thairof, and I cleirit my ſelff of the ſame in your ll. preſence, it being a poynt verrie far fra my profeſſioun to be a movair or ſteirair⁸ vp of Seditioun, as his MA^{TIE} wes informed of me; and fra my hait I deteaſt fuche Seditious practizes, as being moſt impious and wicked, and repugnant to the

¹ Inverness.

² It is unsigned, and no deliverance indorsed, but it is evidently the original, having the marks of the ribbon usually passed through Letters and bills, &c., when sealed and sent to a distance.

³ Weak.

⁴ Weary; spent.

⁵ Am I able to travel.

⁶ Survive, recover.

⁷ Displeasure.

⁸ Stirrer.

Holy Ordinanceis of God, quhairby we are commandit to gif all dew obedyence to our superioris. And as I feliew vnto your ll., my comeing to this burgh the tyme of the Parliament wes vpone a meere necessitie, and to eschew the danger of horneing, quhairwith I wes threattned, for xxij merkis. And dureing the schorte tyme of my aboade heir, whilk wes not xxxvj houris, I spak not with a Parliament man, except *the Lord Kilfayth*,¹ whome I employed to be cautioner for me; and had no kynd of medling with the affairis of the Parliament, becaus thay concerneit me not; bot keipit my selff very quyet till my away-going. And dureing the tyme of my Warding in *the Castell of Edr*, my cariage wes so modest, calme, and peceabill, withoute medling with thir matteris of THE KIRK now in questioun, as I hoip nothing can be obietit vnto me. And yf HIS MATIE wald be gratiouflie pleasit to suffer me spend the few remanent of my aigeit and weyryfome dayes at my awne houle, I wilbe verrie glaid and willing to be perpetuallie confynned thair, and tua myllis thairabout; and I fall neur transcend that boundis, nor medle with ony matter concerneing the pollicie and governement of THE KIRK. Most humblie befeiking your ll. to haif confideratioun of this my estate; and outhir be your selfis, or be your intercessioun at HIS MAIESTEIS handis, to grant me some ease and releiff in this heaue charge layed vpoune me, whilk wilbe my vtter ouerthrow and wrak. And your ll. anfuier.

(22.) LETTER, *The Archbishop of St Andrews*² to THE KING.

MOST SACRED SOVERANE,

IT may please your most excellent MATIE, I haive seene your MATIES directioun sent to THE EARLE OF DUNBAR about MR DAVID LYNDSEYE his intemperance in preaching. I haive tane baldnes to give anfuier and avyse, in maist humble and submisf maner. The man vas input³ be your MATIE vpon my rasche and oft repeited fute. He hes oft done veill aganes the seditious, albeit instantlie. The vordes he spak, to my gryt greiff, wer to reprehend your MATIE for toleratioun and advancinge off PAPISTES, quha ever foght your MATIES wrak; and this was efter jat I had congratulat to the peipill your MATIES lait wonderfull delyverie.⁴ Efter Sermon, I convened *the Bailleis*, and *Counfull*, and sent pame to him to querrell him for his vnreverent usage; quhilk wrocht this effect that the daye follovinge he preached ane palinod,⁵ sa impudentlie flatteringe to your MATIES praise, and vilipendinge all the Princes of Europe be name, in your MATIES respect,⁶ that all men esteimed he vas makand penance for the former dayes insolence, with supererogatioun.

This his foolie⁷ is nocht worthie of your MATIES wrathie; and as for me, I will nocht give advyse to honour sick ane⁸ with publick censure, at sic ane tyme. I haive advysed with your MATIES most trustie servantis of our societie, quha thinkes meit to transport him, but noyce,⁹ to a landwart¹⁰ Kirk; and to assume to me ane¹¹ mor vyfe¹² and fast,¹³ quhilk your M. fall see accomplished, but your MATIES empefchement.¹⁴

My Lord of Dunbar hes employed him selff sa faythfullie, eafaldlie,¹⁵ and fortunatlie, in this lait service, that I presume to advyse your MATIE to give him credit in your MATIES service, in our gryttest turne, in this Parliament; for quhatfumever is glansed to your MATIE in the contraire, is aither *panici terrores*, or prevaricatioun.

SIR, I lacke moyen to do quhat I wald in your MATIES service. I heir, daylie, foule vanities quhilkis I think I am called to repreffe. I want formall rycht and rent. Supplie this, SIR, in this your approching Court, and than 3e fall nocht neid to wreit hither; but the punished fall feik thither toward your MATIE for obteneinge pardone. Finallie, your MATIES erandis in the credit off *the Earle of Dunbar*, or of ane off lyk dispositioun, is heir possibill and easie. *Non debet sub tali tantoque*

¹ Sir William Livingston, one of the Ordinary Lords of Session, who succeeded Sir John Preston, Lord Fentonbarns, Jun. 6, 1609. His son was created Viscount of Kilsyth and Lord Campsie, by patent, Aug. 17, 1661.

² George Gladstones, translated from the See of Caithness anno 1606, but not consecrated till anno 1610. Died May 2, 1615.

³ Inducted, put in.

⁴ From the Earl of Gowrie's Conspiracy.

⁵ Lat. palinodium, recantation after professions of repentance. The term is still used both in the Civil and Ecclesiastical Courts.

⁶ In comparison to the King.

⁷ Folly.

⁸ Such a one.

⁹ Translate him without bustle or noise.

¹⁰ To a country or landward Parish Church.

¹¹ One, viz. another Minister.

¹² Wise.

¹³ Steady, sure.

¹⁴ Without hindrance or trouble to your Majesty.

¹⁵ Sincerely, without duplicity, (q. d. one-foldly,) in contradistinction to *two-fold*, double, deceitful. The word is now nearly obsolete.

principē precarium esse imperium. This,¹ I humbly recommend your MATIES person and estate to God his mercifull Providence, I remaine,

Your MATIES maist humble oratour and obedient servant,

EDINBURGHE, nynt of Februar, 1606(-7.)

To THE KINGIS most excellent MATY.

SANCTANDROIS.

No. IX.

BOND by JOHN fifth EARL OF CASSILLIS, to his Brother HEW KENNEDY, commonly called THE MASTER OF CASSILLIS, to pay him and his accomplices 1200 merks yearly, &c. to commence from the date of their taking the Life of THE LAIRD OF AUCHINDRAYNE.

(See VOL. III. pp. 124, 581, &c.)

[In the preceding Collection, and also in the 'Historical and Genealogical Account of the principal FAMILIES of the Name of KENNEDY,' recently published,² all the incidents then discovered relative to the accumulated acts of villainy perpetrated by THE LAIRD OF AUCHINDRAYNE and his son have already been disclosed. The public being likewise in possession of the leading features of this extraordinary case, from the graphic pen of SIR WALTER SCOTT, who has prefixed an introductory notice to his dramatic poem, 'AUCHINDRAIN, or the Ayrshire Tragedy,' it is altogether unnecessary to attempt even a brief sketch of their lives and crimes in this place.

The Historical Account above referred to, and the present Collection, contain a great variety of Documents which have been brought forward, alike to illustrate the Trials of the Lairds of Auchindrane, and the extraordinary state of society and manners in the important district of Carrick and the adjoining shires. But no Papers which have hitherto been discovered appear to the Editor to afford so striking a picture of the savage state of barbarism into which that country must have been sunk, as the following BOND by the EARL OF CASSILLIS to his brother and heir apparent, Hew Master of Cassillis. The uncle of these young men, Sir Thomas Kennedy of Culzean, Tutor of Cassillis, as the reader will recollect, was murdered, May 11th, 1602, by Auchindrayne's accomplices.

THE MASTER OF CASSILLIS, for many years previous to that event, was in terms of open personal hostility to his brother. During all that period, however, the Master maintained habits of the closest intimacy with Auchindrayne and his dissolute associates, and actually joined him in various hostile enterprises against his brother the Earl.³ The occurrence of the *Laird of Culzean's Murder* was embraced by their mutual friends as a fitting opportunity to effect a permanent reconciliation between the brothers; "bot (as 'the Historie' quaintly informs us) the cuntry thoct that he wald not be ernst in that cause, for the auld luiff betuix him and Auchindrayne."⁴ The unprincipled Earl, (whose *sobriquet*, and that of some of his ancestors, was *King of Carrick*, to denote the boundless sway which he exercised over his own vassals and the inhabitants of that district,) relying on his brother's necessities, held out the infamous bribe contained in the following Bond, to induce his brother, the Master of Cassillis, to murder his former friend, the old Laird of Auchindrayne. Though there be honour among thieves, it would seem that there is none among assassins; for the younger brother insisted upon having the price of blood assured to him by a written document, drawn up in the form of a regular BOND!

Judging by the Earl's former and subsequent history, he probably thought that, in *either* event, his purposes would be attained, by "killing two birds with one stone." On the other hand, however, it is but doing justice to the Master's acuteness, and the experience acquired under his quondam preceptor Auchindrayne, that we should likewise conjecture that, on his part, he would hold firm possession of his BOND, to be used as a checkmate against his brother, should he think fit afterwards to turn his heel upon him, or attempt to betray him into the hands of justice.

The following is a correct copy of the Bond granted by the Earl, as transcribed from the original.]

WE, JOHNE EARLE OF CASSILLIS, Lord Kennedy, &c., Bindis and Oblissis ws, that howfove our broder HEW KENNEDY of Brounstoun, with his complices, talkis THE LAIRD OF AUCHINDRANEIS lyf, that we sall mak guid and thankfull payment to him and pame of pe sowme of tuelff hundreth merkis, 3eirlie, togidder with corne to sex horfis, ay and quhill ⁵ we reffaw ⁶ pame in houshold with our self: Beginning pe first payment immediatlie after pair committing of pe said deid. ATTOUR,⁷ howfove we reffaw pame in houshold, we sall pay to pe twa ferwing gentillmen pe feis, 3eirlie, as our awin houshold ferwandis. And heirto we Obliss ws, vpoun our honour. SUBSCRIVT with our hand, AT MAYBOLE, pe ferd day of September, 1602.

JOHNE ERLE OFF CASSILLIS.

¹ Thus. ² The Quarto Edition, Edin. 1830. ³ For the confessed purpose of taking his life, in following out their deadly Feud. ⁴ Historie of the Kennedies, p. 59. ⁵ Aye and until. ⁶ Receive. ⁷ Moreover.

GENERAL INDEX.

GENERAL INDEX

TO CRIMINAL TRIALS, &c.

DURING THE REIGNS OF

KINGS JAMES IV AND V, MARY QUEEN OF SCOTS, AND KING JAMES VI.

* * THE reader, in consulting the following INDEX, is requested to remark, that owing to the Editor's having been under the necessity of sending the TRIALS which occurred during the reign of KING JAMES VI. to press, before the introductory portions of this work were compiled, it became requisite for him to page the earlier reigns in Vol. I. thus, * 1, * 2, &c. In order to avoid the annoyance and trouble of consulting *separate* INDICES of persons and matters, the Editor has bestowed a great deal of time and labour in constructing an extremely copious GENERAL INDEX, which he may venture to say embraces every circumstance contained in the work, which is at all likely to be esteemed interesting and useful to the historian, lawyer, antiquary, or genealogist. The most prominent of the ancient words and phrases, and the leading historical facts, superstitions, &c., have also been incorporated, so as to render the work more acceptable, and also as useful as possible to the public, as a book of reference.

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